

(30,324)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 381

**JOHN W. STEPHENSON, EMMA THOMSON, JENNIE
STEPHENSON, ET AL., APPELLANTS,**

vs.

H. L. KIRTLEY, H. W. HAROLD, AND F. E. CAWLEY

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

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[fol. 1]

CAPTION—Omitted

[fol. 2]

**IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA**

In Chancery

JOHN W. STEPHENSON, EMMA THOMSON, JENNIE STEPHENSON,
MARY S. WEIMER, and W. B. STEPHENSON, Plaintiffs,

vs.

H. L. KIRTLEY, H. W. HEROLD, and F. E. CAWLEY, Defendants

PLAINTIFFS' BILL OF COMPLAINT—Filed July 2, 1923

To the Honorable George W. McClintic, judge of the District Court
of the United States for the Southern District of West Virginia:

The plaintiffs above named file this their bill of complaint, and
for their cause of action respectfully show unto your honor:

First

That the plaintiffs John W. Stephenson and Mary S. Weimer are
residents and citizens of the State of Minnesota; that the plaintiffs
Emma Thomson and W. B. Stephenson are residents and citizens
of the State of Pennsylvania, and that the plaintiff Jennie Stephen-
son is a resident and citizen of the State of California; and that
the defendants H. L. Kirtley and H. W. Herold are residents and
citizens of the State of West Virginia and of the Southern District
thereof, and the defendant F. E. Cawley is a resident and citizen
of the State of Massachusetts.

Second

That this suit is between citizens of different states; that the
amount in controversy herein exceeds the sum of three thousand
dollars, exclusive of interest and costs.

Third

(1) That the plaintiffs John W. Stephenson, Emma Thomson,
Jennie Stephenson and Mary S. Weimer are the owners of a one-
fourth undivided interest in certain lands situate in Nicholas County,
West Virginia, and within the Southern District of the State of West
[fol. 3] Virginia, the said parties being the owners of said one-
fourth interest in the following proportions: said John W. Stephen-
son, 3/48; said Emma Thomson 5/48; said Jennie Stephenson
1/24 and said Mary S. Weimer 1/24.

twelfths of said one-fourth, leaving in himself the other one-sixth of said one-fourth, an office copy of which deed is filed herewith as part hereof marked "Exhibit No. 7." That subsequently the plaintiff Emma Thomson purchased the interest of said W. B. Stephenson in said land, to-wit, a one-sixth of a one-fourth thereof, and paid him in cash the sum of three thousand dollars therefor, and the said W. B. Stephenson by deed of January 12, 1911, conveyed to the said Emma Thomson his one-sixth interest in the one-fourth owned by the said Stephensons, an office copy of which deed is filed herewith as part hereof marked "Exhibit No. 8," so that after the making of said deed the said one-fourth interest in said lands was owned by the plaintiffs John W. Stephenson, Emma Thomson, Mary S. Weimer and Jennie Stephenson in the proportions of three-forty-eighths by said John W. Stephenson, five-forty-eighths by said Emma Thomson, and a one-twenty-fourth each by said Jennie Stephenson and Mary S. Weimer, and that the same has been and still is held by the same parties in the same proportions.

(3) That the defendant F. E. Cawley, on the 27th day of February, 1920, instituted a suit in the Circuit Court of Nicholas County, West Virginia, against the plaintiffs herein, returnable to March Rules, 1920, having for its purpose the collection from W. B. Stephenson, the defendant in that suit, of a large sum of money, to-wit, the sum of twenty thousand dollars, with interest for several years, and subjecting to sale in satisfaction of said claim the interest of said W. B. Stephenson in said Nicholas County lands and claiming [fol. 7] and averring that the said W. B. Stephenson was the owner of a full one-fourth interest in all of said lands and that the deeds made by him to his co-plaintiffs in this suit were fraudulent and void and made for the purpose of preventing the said F. E. Cawley from collecting the said claim. That all of the defendants in that suit, the plaintiffs in this suit, were proceeded against as non-residents; that no process was ever served upon them in said suit; that a purported attachment was issued in said case and the same levied upon the one-fourth undivided interest in said lands as the property of said W. B. Stephenson. That in said suit a decree was entered purporting to adjudge that the said deeds made by said W. B. Stephenson to his co-plaintiffs herein were fraudulent and void, and attempting to set the same aside in so far as the plaintiff in that suit, the defendant in this suit, F. E. Cawley, was concerned, and directing that the said one-fourth interest be sold in satisfaction of the claim of said F. E. Cawley, which said decree was entered on the 25th day of February, 1921. That pursuant to the directions contained in that decree W. G. Brown, J. M. Wolverton and T. W. Ayres, who were thereby appointed special commissioners for the purpose, made a purported sale of the said one-fourth interest in said lands, at which sale defendants H. L. Kirtley and H. W. Herold became the purchasers. That the said special commissioners reported said sale to said Circuit Court of Nicholas County and the same was attempted to be confirmed by said court on the 20th day of May, 1921, and the said special commissioners were directed

to convey said one-fourth interest to said purchasers upon the payment of the purchase money, and that on the 18th day of May, 1923, the said special commissioners did attempt to convey the said one-fourth interest in said lands to said purchasers, reciting therein that all of the purchase money had been paid. An office copy of the record of the proceedings had in said Circuit Court of Nicholas County is herewith filed as part hereof marked "Record" and a duly [fol. 8] certified copy of the purported deed from said special commissioners Brown, Wolverton and Ayres to said Kirtley and Herold is likewise filed herewith as part hereof marked "Exhibit No. 10."

(4) That the orders and decrees entered by the Circuit Court of Nicholas County in said cause, and the deed made by said special commissioners to said Kirtley and Herold pursuant thereto are void and of no effect, for the reasons that the said court did not have jurisdiction to enter said decrees at the time the same were entered, nor at any other time; that the only basis of the jurisdiction of said court was the order of attachment attempted to be levied upon said one-fourth undivided interest in said real estate. That the said order of attachment was void and of no effect for the reason that there was no valid affidavit as required by law on which the same was issued; that under the law of the State of West Virginia in order to a valid attachment the affidavit must set out the nature of the plaintiff's claim with the same certainty and directness that is required in a declaration or other pleading; that the affidavit filed in this case simply states that the plaintiff's claim is one arising out of contract, as will be seen from a reference to said affidavit. There is a statement in the affidavit that the plaintiff in that suit recovered certain judgments against W. B. Stephenson, but there is no allegation or statement in the affidavit that these judgments so recovered constitute the claim upon which the plaintiff in that case brings the suit. That the invalidity of said attachment affidavit appears upon the face thereof, and that under the law of the State of West Virginia an attachment based upon an invalid affidavit is absolutely null and void, and must be quashed, and when the jurisdiction of the court depends upon such attachment, the suit must be dismissed, the only basis of jurisdiction being removed.

(5) That said proceedings are absolutely null and void for the further reason that under the law of the State of West Virginia before a valid decree can be entered adjudging the rights of the parties [fol. 9] in a suit in which no personal service has been had there must be allegation and proof of the facts upon which said decree rests; that in this case there was no proof offered and none could be offered to sustain the allegation that the deeds made by W. B. Stephenson to his co-plaintiffs were fraudulent; that as will appear from the said decree filed herewith as part of the Exhibit marked "Record" no evidence whatever was heard and the plaintiffs say that the court was without jurisdiction to enter a decree ordering the sale of said lands and setting aside the deeds to them in the absence of evidence to support the allegations of the bill. That this lack of jurisdiction appears from the face of the purported decree it-

self, it affirmatively showing what the court considered, and it not appearing from this recital that any evidence was taken and heard, and in fact the whole record discloses that no evidence was heard, and plaintiffs are advised and aver the truth to be that no evidence of any kind was heard by the court before entering said decree.

(6) That as a matter of fact the allegations of said bill are entirely false; that the said W. E. Stephenson never did own more than a one-twenty-fourth undivided interest in said lands; that at the time they were purchased, one-sixth of the purchase money was furnished by each of the Stephenson children and the purchase made in the interests of all of them; that the one-sixth interest so originally owned by the said W. B. Stephenson was sold by him for a valid and ample consideration to the plaintiff Emma Thomson without any purpose on her part or any knowledge of any purpose upon the part of said W. B. Stephenson to defraud anybody; and plaintiffs aver that so far as the transactions involved in connection with these lands are concerned there never was any fraud on the part of said W. B. Stephenson towards the said F. E. Cawley or anybody else.

(7) That these plaintiffs had no knowledge of said suit or the proceedings had therein until more than two years after the entry [fol. 10] of the final decree of sale and confirmation of sale, and that under the law of West Virginia they can not be permitted to appear in said suit and defend the same after the expiration of two years from the entry of such final decree. That the said plaintiff F. E. Cawley, although well knowing the residence of all of the plaintiffs in this suit, and well knowing their interest in the subject matter thereof, never advised them of the pendency of said suit to subject said one-fourth interest in said lands to sale; but on the other hand carefully concealed from them all knowledge of the pendency of said suit.

(8) That the said plaintiffs and their co-tenant the said A. L. Hegarty are in the possession of said lands.

(9) That the said defendants Kirtley and Herold are claiming said lands under the purported deed made to them by said special commissioners Brown, Wolverton and Ayres above referred to, and that the said deed and the decrees entered by the Circuit Court of Nicholas County directing sale of said one-fourth undivided interest in said lands and attempting to confirm the sale thereof by said special commissioners are all null and void for the reasons aforesaid, and constitute clouds upon the title of the plaintiffs J. W. Stephenson, Emma Thomson, Mary S. Weimer and Jennie Stephenson to said one-fourth undivided interest in said lands.

Prayer

Plaintiffs pray that the decree of the Circuit Court of Nicholas County above referred to, entered February 25th, 1921, directing the sale of said lands, the decree entered May 20th, 1921 confirming said supposed sale thereof, and the deed made by said special commis-

sioners Brown, Wolverton and Ayres on the 18th day of May, 1923, attempting to convey said lands to the defendants Kirtley and Herold, all of which are herein set forth and referred to, may be decreed to be null and void and of no force and effect, and that the [fol. 11] cloud arising therefrom upon the title of the plaintiffs John W. Stephenson, Emma Thomson, Jennie Stephenson and Mary S. Weimer to said lands may be removed and a decree entered adjudging said plaintiffs to be the owners of a one-fourth undivided interest in said lands in fee simple.

John W. Stephenson, Emma Thomson, Jennie Stephenson, Mary S. Weimer, W. B. Stephenson, by Counsel. Miller & Hartswick, A. J. Horan, Brown, Jackson & Knight, Counsel for Plaintiffs.

Jurat showing the foregoing was duly sworn to by Emma Thomson omitted in printing.

[File endorsement omitted.]

[fol. 12] EXHIBIT No. 1 TO BILL OF COMPLAINT

This Deed, made the 5th day of March, 1902, between Mary E. Rhodes of the city of Marietta, Washington County, Ohio, by Frank R. Ellis of the city of Cincinnati, and State aforesaid, her attorney in fact, of the first part, and A. L. Hegarty and W. B. Stephenson of the County of Clearfield, and State of Pennsylvania, of the second part, Witnesseth, that the party of the first part, in consideration of Twelve (\$12.00) Dollars per acre, doth hereby grant, with covenants of General Warranty, to the said A. L. Hegarty three-fourths undivided and to the said W. B. Stephenson one fourth undivided of all her three, certain contiguous tracts of land, lying and being in Hamilton and Summersville Districts in the county of Nicholas and State of West Virginia on headwaters of Buffalo Creek, a branch of Elk River, and Twenty-mile, Peters Creek, and some of the west branches of Muddlety Creek, tributaries of Gauley River:

The First tract is bounded and described as follows, to-wit: Beginning at two chestnuts on the wagon road leading from Muddlety Creek to Clay Court House on a ridge corner to the 1,200 acre tract (No. 2) and to the Ogden and Looney tract and to a tract owned by James Robinson and with the latter S. 14 W at 18 poles crossing a drain flowing west, 55 poles to a double chestnut and chestnut oak as top of ridge corner to Robinson, thence N. 82 E. crossing point of ridge at 18 poles, 58 poles to a double chestnut on southwest brow of the mountain corner to Robinson, thence S. 34½ E., at 56 poles crossing a drain flowing southwest, at 90 poles to a path at top of ridge, at 123 poles crossing a drain flowing southwest, at 158 poles crossing top of a flat ridge, in all 225 poles to three white oak stumps true corner in Elihah Bobbitt's field at a rock pile and stake, thence S. 83½ W. 34.6 poles to a beech and white oak on a hill side, thence

S. 44 degrees and 50 minutes W. 78 poles to a poplar and gum in laurel at the foot of hill crossing the south fork of Meadow Creek at [fol. 13] 35 poles, thence S. 59 E. 58 poles and 8 links to a spruce pine, beech and birch on left bank of left fork of Meadow Creek crossing a branch of Meadow Creek flowing north at 7.4 poles, thence N. 47 E. 34.6 poles to a white oak on a hillside crossing said left fork at 3 poles, thence S. 7 E. 62.6 poles to two white oaks near a branch on a west hillside thence S. 66 degrees and 6 minutes W. 62 poles to a gum and hickory near top of ridge at foot of knob crossing a branch of Meadow Creek at 22, poles, thence along the ridge S. 41½ W. 79 poles to a double chestnut on point of a small ridge, thence S. 68 W. 133 poles to a chestnut oak in a low gap in the divide between the waters of Muddlety and Peter's Creek at the head of Buck's Garden Creek, thence S. 55 W. 41 poles to two linds (one down) on top of the divide, thence S. 22 degrees and 40 minutes W. 31 poles to a locust at the top of the divide, thence S. 33 W. 96 poles crossing head of a hollow to a double chestnut marked as a pointer in a flat at top of the divide where two chestnut oaks stood, original corner to school land, and with the latter S. 63 degrees and 10 minutes W. 58.4 poles to a sugar original corner on top of divide between Buck's Garden Creek and Pine run branches of Peter's Creek at west end of a gap, thence N. 86 W. 20 poles to two chestnuts marked as pointers on north side of a high knob where a poplar original corner stood (poplar found down), thence S. 79 W. 8 poles and 6 links to a yellow lind original corner, thence S. 40 W. 114 poles to two chestnut oaks on the brow of a high point on said dividing ridge, thence N. 80 W. 34 poles to a red oak on top of ridge, thence S. 28 degrees and 10 minutes W. 35 poles to a red oak on left side of top of a flat on said ridge, thence S. 73 W. 104 poles to a chestnut oak at top of ridge at foot of a knob, thence N. 80 W. 32 poles to a red oak and chestnut oak near top of ridge in low gap corner to said school land and a tract of 9,100 acres granted to William Wilson, and *with* running with the lines of Allen Rader's farm N. 33 degrees and 8 minutes, W. 279 [fol. 14] poles to three hickories and a chestnut oak where maple stood on a hillside corner to said Wilson tract, now Allen Rader, crossing the right hand fork of Buck's Garden Creek at 207 poles, thence N. 54 W. 230 poles to a double chestnut oak at top of ridge between Buck's Garden and Twenty Mile Creek at foot of a knob corner to said Wilson grant of 9,100 acres and to the Cameron-Brockeroff lands passing top of ridge at 32 poles, at 50 poles to head of hollow flowing to the right, at 126 poles to top of ridge running south-east and northwest, thence with Brockeroff N. 40½ E., crossing a branch of Twenty Mile Creek at 170 poles, at 222 poles another branch of said creek, at 364 poles crossing a drain of Twenty Mile Creek, at 488 poles crossing another branch of Twenty Mile, and on 609 poles of three chestnut oaks at top of ridge between Twenty Mile and Buffalo Creek, thence N. 64 W. 40 poles along said ridge to three chestnuts (down), thence S. 83 W. 38 poles to a chestnut oak on top of knob, thence N. 11 E. 48 poles crossing head of Beechy Fork of Buffalo, and on 54 poles to two hickories (one down) on a hillside, thence N. 38 E. 58 poles to a double beech, on bank of a branch

of Beechy Fork, thence S. 63 E. 17 poles to two chestnut oaks and a poplar (all down), thence N. 83½ E. at 47 poles crossing Clay County road, at 98 poles crossing a branch of Robinson's Fork of Buffalo, in all 127 poles to a gum on a hillside, thence N. 20 E. 41 poles to a chestnut oak on top of mountain in laurel, thence N. 24 W. 31 poles to a small gum and two chestnut oaks (down) thence N. 42 E. 68 poles to a stake with gum pointers, thence S. 23 E. 31 poles to two chestnut oaks on cliff at brow of mountain, thence S. 39 degrees and 54 minutes, E. at 12 poles crossing line of Wilson Survey of 93,000 acres (Cameron-Brockhoff line) corner to Ogden and Looney tract, and with, 60 poles crossing hollow draining north east, at 102 poles to a deep hollow and up same in all 224 poles to two chestnut oaks on the north east side of road at top of ridge at head of said hollow, thence S. 64 degrees and 24 minutes E. 106 poles crossing road to a chestnut oak at top of ridge by side of road, and [fol. 15] thence S. 53 W. 40 poles to two chestnuts to the beginning, containing exclusive of three reservations 3,096.9 acres. The three reservations embraced within the lines of said tract which are excepted and reserved from the operation of this conveyance are 110.5 acres of Sinnett Rader's 171.7 acres for John Rader, and 112.1 acres of J. S. Hill.

The Second Tract is bounded as follows, to-wit: Beginning at two chestnuts on ridge by the side of the Clay County Road corner to tract No. 1 (3,000 acre grant), to a tract of Ogden and Looney, and to a tract of James Robinson and with the latter N. 73 degrees and 38 minutes E., at 8½ poles crossing Clay County Road, at 40 poles crossing a hollow draining to left, at 78 poles crossing top of narrow ridge, at 88 poles to head of hollow draining to left, at 96 poles to top of ridge running north east and south west, at 140 poles to head of deep hollow draining to left, at 210 poles to top of dividing ridge between waters of Meadow Creek and Buffalo creek, at 252 poles to head of deep hollow draining east, and on 314 poles to a beech where a beech and double maple are called for (maple found down) at top of ridge on the side of a knob corner to C. F. Herold, and running thence with his lines down ridge N 6 degrees and 35 minutes W. 80 poles to a maple and birch pointers where a poplar and red oak original corner stood, thence N. 56 degrees and 48 minutes E. at 13 poles crossing Broken-bridge Run of Muddlety Creek, at 21 poles crossing the road, 28.6 poles to a white oak and hickory above road on hill side, thence S. 78½ E. 40 poles to end of a point ridge, 67 poles to hollow draining to right, at 140 poles passing a high point 190 p. to a hollow draining to right, in all 220 poles to a chestnut-oak (down) original corner thence running with lines of Anderson Herold, N. 15½ W. 91 poles to top of ridge, 156 poles to a gum, whit-oak and two chestnuts, near top of ridge at head of hollow draining west where a gum, maple, and beech are called for (the gum is an original corner), thence N. 32 degrees and 10 minutes east 96 poles to two beech stumps in Anderson Herold's field below point of high knob where original corner two [fol. 16] beeches and a maple stood, thence S. 89 W. 54 poles to

two sugars on east hillside, thence N. 28 W. 46 poles to end of point ridge, at 179 poles crossing a branch of Enoch Run of Muddlety Creek, 184 poles to a double chestnut and two white oaks and a poplar where a double chestnut and two maples stood (maples down), thence N. 46 E. 60 poles passing point of a ridge, 74 poles to two spruce pines and a maple (maple dead) on right hand fork of Enoch Run corner to Anderson Herold and Remley's 510 acre tract, and with the latter N. 43 W. 132 poles to a point where stake is called for in Lot 1 of Blair Survey to a lind and dogwood corner to Remley and tract No. 3 (500 acre grant), and with the latter and Ogden and Looney S. 28 degrees and 20 minutes W. 773 poles to the beginning, containing 957.2 acres being the remainder of Lot No. 1 of Blair Survey.

The Third Tract is bounded as follows, to-wit: Beginning at a stake, lind and dogwood, pointers, corner to tract No. 2 (Blair Lot No. 1) and corner to Remley's 510 acre tract, and with the latter N. 19½ E. 23 poles crossing a branch draining southeast, 128 poles to head of hollow draining north east, 166 poles to top of ridge, 192 poles to head of Enoch Run, on 216 poles to a bunch of chestnuts corner to Remley and certain school lands, and with the latter N. 66 W. 70 poles to a hickory, gum chestnut, and two dogwoods, at head of Buffalo Creek corner to Cameron and Brockeroff tract, and with the latter S. 45½ W. 35 poles to top of ridge running north-west and south east, 75 poles to top of ridge running north west and south-east, 92 poles to a hollow draining north west, 124 poles to top of a narrow ridge running north west and southeast, 180 poles crossing a branch of Robinson's Fork of Buffalo Creek, 224 poles to top of a ridge, 258 poles to head of a deep hollow draining north-west, 272 poles to end of a point ridge, and up same *same* course 327 poles to two chestnuts marked where original corner two poplars stood on west hillside facing branch of Robinson's Fork, thence N. 87½ W. 82 poles to a gum and two black oaks (latter down) at top of ridge near a path, thence N. 18 E. 65 poles along top of ridge to two chestnut oaks near a path, thence, N. 23 W. 33 poles along [fol. 17] top of ridge to a chestnut and chestnut oak, thence S. 67 W. 23½ poles to a gum and chestnut oak on west hill side at head of hollow, (latter down), thence N. 78 W. 30 poles to a poplar and two chestnuts on a west hillside by a branch of Buffalo Creek thence S. 42 W. 77 poles crossing several branches flowing northwest to a small chestnut oak sapling near top of a ridge where chestnut oak and chestnut original corner stood (both found down), thence S. 1 degree and 40 minutes W. 44.6 poles to a chestnut and two-chestnut-oaks near top of ridge at the side of a road, thence S. 28 E. 120 poles to two gums and a chestnut at the top of a ridge near the line of the Cameron-Brokeroff land, thence S. 21 E. 15 poles crossing Cameron et al. line, and running with the Ogden and Looney as claimed by latter 332 poles in all to a stake on line of tract No. 2 and with same N. 28 degrees and 20 minutes E. 480 poles to the beginning, containing 789.97 acres. But the metes and bounds of the last described tract as here given leave out 124.3 acres of the land conveyed to the late Charles R. Rhodes and bequeathed by him to the

grantor Mary E. Rhodes because of a supposed interlock to that extent with the Ogden and Looney tract adjoining, but the said Mary E. Rhodes does not for that reason abandon or relinquish any right or title which she now has to said land or her right to convey the same to the grantees or any other party to whom she may hereafter sell.

The aggregate acreage of the land hereby conveyed being by survey of W. C. Reddy 4844.07 acres the aggregate purchase money is found to be Fifty-eight Thousand One Hundred and Twenty-eight Dollars and Eighty-four Cents (\$58,128.84) of which sum Twenty Thousand Dollars (\$20,000.00) has been paid cash in hand the receipt whereof is hereby acknowledged.

[fol. 18] The balance of said purchase money is represented by six notes herein described and to be paid as follows: One note for Three Thousand Nine hundred and Ninety Dollars and Twenty nine Cents (\$3,990.29) payable one year after date; two notes for Four Thousand Three Hundred and Fifty nine Dollars and Sixty-six Cents (\$4,359.66) each, payable one year after date; one note for Five Thousand Eight Hundred and Twelve Dollars and Eighty-eight Cents (\$5,812.88) due two years after date; one note for Six Thousand Eight Hundred and Ninety Six Dollars and Seventy-three Cents (\$6,896.73) due two years after date; and one note for Twelve Thousand Seven Hundred and Nine Dollars and Sixty two cents (\$12,709.62) due three years after date.

All of said notes are signed by the said A. L. Hegarty and W. B. Stephenson the grantees herein, are dated March 5th, 1902, bear legal interest at 6% from date until payment, and a lien is hereby expressly reserved on the lands hereby conveyed to secure the payment of the said unpaid purchase money represented by and described in said notes. Said notes are executed and made payable to Frank R. Ellis Attorney in fact for Mary E. Rhodes, and may be paid at any time before maturity with interest to date of payment.

And it is expressly understood by the grantor in this deed as well as the grantees accepting it that if there should be any shortage in the aggregate acreage of the land hereby conveyed that the grantees shall have an abatement of the purchase money at the rate of Twelve (\$12.00) Dollars per acre for all of said shortage as of the date of this deed, and if a correct survey of the said lands should show a greater aggregate acreage, than that mentioned herein then the grantor shall be entitled to receive the same price per acre for all such excess with interest from March 5, 1902, until paid.

[fol. 19] And the parties of the second part by accepting this deed agree not to cut or remove any timber from the land hereby conveyed without the written consent of the grantor herein first being had and obtained unless the said purchase money shall have been fully paid.

To Have and To Hold the above described land and premises with the appurtenances of every kind and character whatever unto him the said A. L. Hegarty three-fourths in interest undivided & unto him the said W. B. Stephenson $\frac{1}{4}$ Interest undivided to the only proper use and behoof of them their heirs and assigns forever.

And the party of the first part hereby covenants to warrant generally the title to the lands hereby conveyed and that she will pay all unpaid taxes which may be due on said land up to and including the year 1901, the party of the second part to pay all taxes assessed for the year 1902 and thereafter. And the said grantor further covenants that she has the right to convey the said land to the grantees; that the grantees, their heirs and assigns, shall have quiet possession of the said lands free from all incumbrances after the payment of said unpaid purchase money; that the said party of the first part will execute such other and further assurances of the said lands as may be requisite to make the title good, and that she has done no act to incumber the said lands.

Witness the following signature and seal.

Mary E. Rhodes, by Frank R. Ellis, Her Attorney-in-fact.
(Seal.)

STATE OF OHIO,
Hamilton County, To wit:

I, Ernest Rehm a Notary Public in and for said County and State do certify that Frank R. Ellis, attorney in fact for Mary E. Rhodes of Marietta, Washington County, Ohio, whose names is signed as such to the foregoing deed, bearing date on the 5th day of March, 1902, has this day acknowledged the same before me in my said county.

Given under my hand and official seal this 5th day of April 1902.
[fol. 20] Ernest Rehm, Notary Public, Hamilton County,
Ohio. (Notarial Seal.)

WEST VIRGINIA,
Nicholas County:

Court Clerk's Office

June 11th, 1904.

This Deed from Mary E. Rhodes by Frank R. Ellis her attorney in fact to A. L. Hegarty and W. B. Stephenson was this day presented in this office and with the certificate of acknowledgment thereon admitted to record.

Teste:

Joseph A. Alderson, Clerk of said Court.

A true copy. Teste: P. N. Warner, Clerk.

(Endorsed:) District Court U. S., So. Dist. W. Va. Filed this 2nd day of July, 1923. Ira H. Mottesheard, Clerk.

[fol. 21] EXHIBIT (No. 2 TO BILL OF COMPLAINT

This deed made this the 18th day of January 1906, between James S. Craig, Michael C. Duffy, James B. Duffy, Terance J. Duffy, Francis F. Duffy, and Owen A. Duffy, all unmarried, parties of the

first part, and A. L. Hegarty and W. B. Stephenson, parties of the second part.

Whereas during the life time of P. F. Duffy, he and James S. Craig owned jointly, the lands hereinafter mentioned and they sold same to the grantees herein named, at the price named in this deed and the purchase money was paid to them in full; and the said P. F. Duffy having departed this life intestate, without executing a deed, and he, the said P. F. Duffy left to survive him his said five brothers and *only heris* at law, towit: Michale C. Duffy, James B. Duffy, Terance J. Duffy, Francis F. Duffy and Owen Duffy.

Now, therefore, this deed witnesseth: That for and in consideration of the sum of Four Thousand Seven Hundred and Eighty two Dollars (\$4,782.00) heretofore in hand paid, to said James S. Craig and P. F. Duffy, the parties of the first part do grant unto the parties of the second part, in the proportions hereinafter set out, that certain tract of land situated on the waters of Peters Creek in Summersville District, Nicholas County, West Virginia, adjoining the Benewine Peyatte, the McGee lands, the J. Haymond Robinson 950 acre survey, the tract of 135 acres patented to John H. Robinson, the Rhodes 3,000 acres and the B. L. Rader lands, and is bounded as follows, to-wit: Beginning at a stake at the edge of cleared land and by fence, and about 6 poles from where a poplar corner is called for, the stake in line of Robert G. Carden, thence with Carden's line up a ridge N. 69 E. 8 poles to a chestnut on hill side, N. 22 E. 50 poles to a stake and pointers on a ridge where two hickories are called for not found N. 64 E 80 poles to a stake by a large rock on hill side near the tip here hickory is called for, not found N. 45 E. 20 poles to Carden's line and Abe Keffer's corner, a stake, leaving Carden's land and with Keffer, same course in all 67 poles to a chestnut oak on a [fol. 22] ridge, N. 25 45' E. 41/3/5 poles to two chestnut oaks and maple on a ridge, N. 5 30' W. 74 poles to a small yellow lynn, on ridge, N. 21 30 E. 44 poles to stake and pointers in line of Rhode's tract, now Hagerty and Stephenson, and with same leaving Keffer's N. 31 45' E. 8 poles to a red oak, down, in the divide between Pine Run and Bucks Garden, and along top of divide, S. 79 30' E. 33-7/10 poles to two chestnut oaks on high point, one down, N. 42 30' E. 106-8/10 poles to a stake where a yellow lynn is called for, not found N. 79 30' E. 8 poles to a poplar not found, on side of high point, S. 85 30' E. 20 poles to sugar tree on sharp ridge, N. 64 E. 58 poles to a stake with chestnut pointers, on a high point, corner to the 135 acre tract purchased by Hagerty and Stephenson from J. Haymond Robinson, leaving the Rhodes land and with the 135 acre tract S. 20 E. 32 poles, to a chestnut oak, down, on a branch of Pine Run near the head, S. 16 30' W. 68 poles to a chestnut oak and gum on a point, S. 47 E. 19 poles to a gum and two chestnuts on the side of a ridge, near the top, N. 73 30' E. 63 poles to two chestnut oaks on the — of steep ground and near the top of the ridge, N. 52 30' E. 24 poles to a chestnut and chestnut oak, chestnut gone on side of a ridge near the top and corner to Robinson's 950 acre survey, leaving the 135 acre tract and with the 950 acre tract, N. 73 30' E. 144 poles to a double chestnut oak and small chestnut on top of the divide

between Pine Run and Muddlety Waters, the chestnut oak is down, leaving the 950 acre tract and with Herold S. 5 E. 18 poles to a black oak new corner, where a black oak is called for, not found, on steep ground near the top of divide, and with Herold S. 19-3/4 W. 46 poles to a black oak and hickory on hill side near low gap between pine run and Fockler's Branch S. 22 45' E. 51 poles to 4 chestnut saplings on a hill side below and near a rock camp S. 30 W. 29 poles to a locust and chestnut sapling on a ridge, corner to Perkin's place, leaving Herold and with Perkin's place now R. M. Bryant, and S. 44 45' E. 49-1/2 poles to a poplar and chestnut on top of the divide between [fol. 23] Pine Run and Peter's Creek, S. 60 W. 58-4/10 poles to 4 chestnut oaks, on top of the divide, S. 61 45' W. 24 poles to two hickories, and two chestnut oaks leaving the mountain and Bryand and with Horan down the mountain, N. 44 30' W. 45 poles to a poplar on flat, new corner, N. 77 30' E. 25 poles cross a hollow to a small yellow lynn on a steep bank, N. 42 W. 89-8/10 poles to a poplar and beech, beech down, on a hill side, S. 62 W. 29 poles to a stake and pointers at County Road, N. 44 30' W. 34-6/10 poles to two chestnut oaks on a high ridge standing 30 feet apart, S. 45 15' W. 157-6/10 poles to pointers on a ridge, in B. L. Rader's field and corner to Rader, and with N. 11 W. 161 poles, to a birch and pointers, on a hill side, old call, beech, birch and maple, S. 63 W. 91-6/10 poles, crossing Pine Run at 13 poles, to a white oak and dogwood in cove, S. 8 W. 155 poles to chestnut oak, S. 70 W. 210 poles to the beginning containing three hundred and ninety-eight and one-half acres (398-1/2), and being the same real estate conveyed by James S. Craig former Commissioner of school lands for Nicholas County West Virginia and Francis B. Smith, Commissioner of School Lands for said County to Andrew J. Horan, by deed dated November 3, 1897, conveyed as two tracts adjoining each other, one of 166 acres and the other of 191 acres, which deed is recorded in the office of the Clerk of the County Court of said County in Deed Book No. 31, on page 220, and being the same tract of land conveyed by A. J. Horan and wife to said James S. Craig and Theodore B. Horan by deed dated November 18, 1897, and recorded in said office in said Deed Book No. 31 on page 228, and the said T. B. Horan and wife by deed dated February 14, 1898, conveyed the undivided one-half of said real estate to the said P. F. Duffy, which deed is also recorded in said office in said Deed Book No. 31, on page 235, and being the same lands conveyed by Robert A. Kincaid, Commissioner of School Lands of said County to James S. Craig and P. F. Duffy by deed dated November 8th, 1901, and recorded in said office.

[fol. 24] The parties of the first part do grant unto the said A. L. Hegarty three-fourth thereof and to the said W. B. Stephenson one-fourth thereof.

Said land is sold and conveyed by the acre at Twelve dollars per acre.

The said James S. Craig warrants generally one-half undivided of said tract of land and the other grantors, as heirs at law of P. F. Duffy, deceased warrant generally the other one-half undivided thereof.

Witness the following signatures and seals:

James S. Craig. (Seal.) James B. Duffey. (Seal.)
 Michael C. Duffy. (Seal.) Terence J. Duffy. (Seal.)
 Francis F. Duffy. (Seal.) Owen A. Duffy. (Seal.)

In presence of Rose Namile, William J. Ryan, as to F. F. D. & O. A. D.

STATE OF WEST VIRGINIA,
 Nicholas County, To wit:

I, T. B. Horan, a Notary Public in and for said County and State, do certify, that James S. Craig and Michael C. Duffy, whose names are signed to the writing above bearing date on the 18th day of January, 1906, have this day acknowledged the same before me in my said County.

Given under my hand this the 7th day of Feb. 1906.
 T. B. Horan, Notary Public.

[fol. 25] STATE OF WEST VIRGINIA,
 County of Nicholas, To wit:

I, T. B. Horan, a Notary Public in and for said County and State do certify, that James B. Duffy whose name is signed to the writing hereto annexed bearing date on the 18th day of January, 1906, has this day acknowledged the same before me in my said County.

Given under my hand this the 19th day of Feb. 1906.
 T. B. Horan, Notary Public.

STATE OF WEST VIRGINIA,
 Brooke County, To wit:

I. C. K. Jacob, a Notary Public in and for said County and State do certify that Terence J. Duffy whose name is signed to the writing hereto annexed bearing date on the 18th day of January 1906, has this day acknowledged the same before me in my said County.

Given under my hand this the 2nd day of April 1906.
 C. K. Jacob, Notary Public. (Notarial Seal.)

STATE OF WISCONSIN,
 Fond du Lac County, To wit:

I. Wm. J. Ryan, a Notary Public in and for said county and state, do certify that Francis F. Duffy and Owen A. Duffy whose names are signed to the writing hereto annexed bearing date on the 18th day of January 1906, have this day acknowledged the same before me in my said county.

Given under my hand and official seal on this the 9th day of April, 1906.

William J. Ryan, Notary Public. My commission expires
 Sept. 29th, 1907. (Notarial Seal.)

[fol. 26] WEST VIRGINIA,
Nicholas County:

Court Clerk's Office

May 1, 1906.

This deed with the certificates thereon was this day admitted to record in said office.

Teste:

Jos. A. Alderson, Clerk said Court.

(Endorsed:) District Court U. S., So. Dist. W. Va. Filed this 2nd day of July, 1923. Ira H. Mottesheard, Clerk.

[fol. 27] EXHIBIT NO. 3 TO BILL OF COMPLAINT

This deed made this the 17th day of July 1903, between J. Haymond Robinson and Jane Robinson, his wife, of the County of Nicholas, State of West Virginia parties of the first part and A. L. Hegarty of Clearfield County, State of Pennsylvania, of the second part. Witnesseth: That for and in consideration of the sum of Sixteen Hundred and twenty dollars (\$1,620.00) in hand paid, the receipt of which is hereby acknowledged, the parties of the first part Do Grant unto the said A. L. Hegarty, with covenants of general warranty that certain tract of land lying on the head waters of Peter's Creek and the head waters of Meadow Creek, a branch of Muddlety Creek, adjoining 3,000 acres patented to John H. Robinson, and 950 acres granted to J. Haymond Robinson by the State of West Virginia and the lands of other in Summersville District, Nicholas County, West Virginia, and is bounded as follows, to wit: Beginning at a chestnut oak near a low gap at the head of the left hand fork of Buck's Garden Creek, corner to a survey of 3,000 acres made for John H. Robinson, and with three lines of same, S. 51 W. 38 poles to two lynns, S. 28 W. 34 poles to a locust, S. 31 W. 90 poles to two chestnuts oaks on a ridge, and leaving S. 32 E. 37 poles to a chestnut oak in a drain of the Pine Run, S. 14 W. 70 poles to two chestnut oaks and a gum, on the end of a laurel point facing the Pine Run, S. 47 E. 18 poles to two chestnuts and a gum, near a drain of same, S. 19 W. 52 poles to two chestnuts on the point of a ridge facing B. L. Rader's N. 73 E. 64 poles to two chestnut oaks near the top of the main mountains N. 50 E. 24 poles to a chestnut and chestnut oak, corner to said 950 acres, and with four lines of same N. 47½ E. 60 poles to a gum on a rich hill side, N. 14 W. 80 poles to a white oak on a hillside crossing Meadow Creek above the upper forks of the left hand fork, at 16 and 34 poles, thence N. 11½ E. 12 poles, crossing the spring branch near its mouth to two beeches on a hillside, N. 62 W. 34 poles, to the beginning, containing 135 acres, and being the same tract of land granted to John H. Robinson by the Commonwealth of Virginia by patent dated February 1st, [fol. 28] 1851. Said land is sold by the acre at twelve dollars per acre.

Witness the following signatures and seals:

J. Haymond Robinson. (Seal.) Jane Robinson. (Seal.)

STATE OF WEST VIRGINIA,
Nicholas County, To wit:

I, A. J. Horan, a Notary Public in and for said county and state do certify that J. Haymond Robinson and Jane Robinson, his wife, whose names are signed to the writing hereto annexed bearing date on the 17th day of July, 1903, have this day acknowledged the same before me in my said county.

Given under my hand this the 17th day of July, 1903.

A. J. Horan, Notary Public.

NICHOLAS COUNTY,
West Virginia:

Office of the Clerk of the County Court

August 8, 1903.

This deed from J. Haymond Robinson and wife to A. L. Hegarty was this day presented in this office and with the certificate of acknowledgment thereon admitted to record.

Teste:

Joseph A. Alderson, Clerk said Court.

(Endorsed:) District Court U. S., So. Dist. W. Va. Filed this 2nd day of July, 1923. Ira H. Mottesheard, Clerk.

[fol. 29]

EXHIBIT NO. 4 TO BILL OF COMPLAINT

This deed made this the 15th day of June 1904, between Abe Keffer of the first part and W. B. Stephenson and A. L. Hegarty of the second part.

Whereas there is a controversy as to the location of the line between the land of the party of the first part conveyed to him by R. G. Carden and the lands of the parties of the second part known as the Rhodes land, and the parties desiring to settle the matter amicably do so, and it is agreed that the line as run by I. A. Dix, Surveyor, shall be the line between them, Now, therefore, this deed Witnesseth:

That for and in consideration of one dollar in hand paid and other valuable consideration the party of the first part doth grant unto the parties of the second part with covenants of special warranty all his right, title and interest in and to the lands inside of the Rhodes survey as run by I. A. Dix, which lines are now painted; and the party of the first part also grants to the parties of the second part necessary rights of way through his land to haul the walnut timber situated on the interlock or land in controversy.

And the parties of the second part are to have the walnut timber cut on the land in controversy. And the parties of the second part release to said Keffer any right, title and interest to any land outside of the line run by Dix, and inside of the deed from Carden to said Keffer, and this agreed line applies only to the line between the Rhodes land and the Keffer land and no other.

Witness the following signature and seal:

(his
Abe X Keffer. (Seal.)
mark)

Witness: A. J. Horan.

STATE OF WEST VIRGINIA,
Nicholas County, To wit:

I, A. J. Horan, a Notary Public in and for said county and state, [fol. 30] do certify that Abe Keffer, whose name is signed to the writing above bearing date on the 15th day of June, 1904, has this day acknowledged the same before me in my said county.

Given under my hand this the 15th day of June, 1904.

A. J. Horan, Notary Public.

WEST VIRGINIA,
Nicholas County:

Court Clerk's Office

June 15", 1904.

This deed from Abe Keffer to W. B. Stephenson & al. was this day presented in this office and with the certificate of acknowledgment thereon admitted to record.

Teste:

Joseph A. Alderson, Clerk of said Court.

(Endorsed: District Court U. S., So. Dist. W. Va. Filed this 2nd day of July, 1923. Ira H. Mottesheard, Clerk.

[fol. 31] EXHIBIT No. 5 TO BILL OF COMPLAINT

Know all men by these presents that whereas I, W. B. Stephenson have taken title to the undivided one-fourth of about five thousand and fifty acres of land in Nicholas County, West Virginia, bought by said A. L. Hegarty and W. B. Stephenson from Mary E. Rhodes as appears by a certain deed dated the — day of —, 1902,

And whereas the purchase money for the said undivided one-fourth has been furnished by W. B. Stephenson, J. W. Stephenson, Jennie Stephenson, Emma D. Stephenson, Catharine J. Stephenson in equal proportions.

And whereas the said purchase of the said one-fourth was made for and on behalf of the said W. B. Stephenson, J. W. Stephenson,

Jennie Stephenson, Emma D. Stephenson, Catharine J. Stephenson and Mary R. Stephenson share and share alike.

Now, therefore I, W. B. Stephenson, do hereby declare that the title to the said lands is held by me the said W. B. Stephenson in trust for the said W. B. Stephenson, J. W. Stephenson, Jennie Stephenson, Emma D. Stephenson, Catharine J. Stephenson, and Mary R. Stephenson as tenants in common, share and share alike and I do hereby agree to convey to each of the said persons for whose benefits the said interests are held in trust his undivided share or interest in said land in fee simple whenever requested so to do.

And I do hereby agree to not to encumber the said premises in any way or manner except for the purchase money under this purchase made of said Mary E. Rhodes.

Witness my hand and seal this 31 day of December A. D. 1902.
W. B. Stephenson.

STATE OF PENNSYLVANIA,
County of Clearfield:

Before me a Notary Public in and for said county and state came W. B. Stephenson who did in due form of law acknowledge the foregoing Declaration of Trust to be his act that it might be recorded as such.

Witness my hand and official seal this 31st day of December A. D. 1902.

Adam Breth, Notary Public. Notary Public commission expires February 2, 1903. (Official Seal.)

(Endorsed:) District Court U. S., So. Dist. W. Va. Filed this 2nd day of July, 1923. Ira H. Mottesheard, Clerk.

[fol. 32] EXHIBIT NO. 6 TO BILL OF COMPLAINT

This deed made this the 16th day of March, 1908, between A. L. Hegerty, unmarried, of the first part and W. B. Stephenson, Jennie Stephenson, Mary S. Weimer, John W. Stephenson and Emma S. Thomson, of the second part, all the parties of Clearfield County, Pennsylvania.

Whereas J. Hammond Robinson and wife in consideration of one thousand, six hundred and twenty dollars (\$1,620.00) by deed dated July 17th, 1903, conveyed to the said A. L. Hegerty a certain tract of land situated on the head waters of Meadow Creek, a branch of Muddlety Creek, adjoining 3,000 acres patented to John H. Robinson and 950 acres granted to J. Haymond Robinson by the State of West Virginia, and the lands of others in Summersville District, Nicholas County, West Virginia, containing 135 acres, and being the same tract of land granted to John H. Robinson by the Commonwealth of Virginia, by patent dated February 1st, 1851, which deed is recorded in the office of the clerk of the county court of said county in Deed Book No. 37, on page 524, and for a more

particular description of said tract of land giving the metes and boundaries thereof, reference is here made to said deed, and,

Whereas the said W. B. Stephenson having paid one-fourth of the purchase money for said tract of land, and being entitled to one-fourth undivided thereof, and the deed for the whole thereof having been inadvertently executed to the said Hegerty for the whole of said tract of land; and at the request of the said W. B. Stephenson the said Hegerty executes this deed.

Now, therefore, this deed witnesseth: That for and in consideration of the purchase money paid by the said W. B. Stephenson as hereinbefore mentioned the said A. L. Hegerty doth grant, with covenants of special warranty, unto the parties of the second part, one-fourth undivided interest in and to said tract of 135 acres of land in the following proportions, to-wit: to W. B. Stephenson, Jennie Stephenson, Mary S. Weimer, each a one-twenty-fourth ($1/24$), [fol. 33] and to said John W. Stephenson and Emma S. Thomson, each a one-sixteenth ($1/16$), in and to said tract of land.

Witness the following signature and seal.

A. L. Hegerty. (Seal.)

STATE OF PENNSYLVANIA,

County of Clearfield, To wit:

I, H. A. Swan, J. P. in and for said county and state do certify that A. L. Hegerty, unmarried, whose name is signed to the writing hereto annexed, bearing date on the 16th day of March, 1908, has this day acknowledged the same before me in my said county.

Given under my hand and official seal on this the 26th day of June, 1908.

H. A. Swan, J. of P. My commission expires first Monday of May, 1913. (Seal.)

STATE OF WEST VIRGINIA,

Nicholas County:

Court Clerk's Office

August 4, 1909.

This deed was this day presented in said office, and thereupon, together with the certificate thereto annexed, is admitted to record.

Teste:

P. N. Wiseman, Clerk of said Court.

STATE OF WEST VIRGINIA,

Nicholas County:

Court Clerk's Office

June 28, 1923.

I, C. E. Stephenson, Clerk of said court do hereby certify that the foregoing is a true copy of a deed from A. L. Hegerty to W. B. Stephenson, et al., of record in my office, in Deed Book No. 49 page 294.

Given under my hand this the 28th day of June, 1923.

Teste:

C. E. Stephenson, Clerk Nicholas County Court.

(Endorsed:) District Court U. S., So. Dist. W. Va. Filed this 2nd day of July, 1923 Ira H. Mottesheard, Clerk.

[fol. 34] EXHIBIT No. 7 TO BILL OF COMPLAINT

This deed made this the 26th day of February, 1908, between W. B. Stephenson and Sara W. Stephenson, his wife, parties of the first part and John W. Stephenson, Emma S. Thomson, Jennie Stephenson and Mary S. Weimer, parties of the first part, all the parties of Mahaffey, Clearfield County, Pennsylvania.

Whereas Mary E. Rhodes by Frank R. Ellis, her attorney-in-fact by deed dated March 5th, 1902, conveyed to A. L. Hagerty and said W. B. Stephenson, three certain tracts of land situated lying and being in Hamilton and Summersville Districts, in Nicholas County, West Virginia, on the head waters of Buffalo Creek, a branch of Elk River and Twenty Mile Creek, Peter's Creek and some of the West branches of Muddlety Creek, tributaries of Gauley River.

First tract containing, exclusive three reservations, 3096.9. The three reservations embraced within the lines of said tract which are excepted and reserved from the operation of said conveyance are 110.5 acres of Sinnet Rader's, 171.7 acres of John Rader and 112.1 acres of J. S. Hill.

Second tract containing 957.2 acres being the remainder of Lot No. 1 of Blair survey.

Third tract containing 789.97 acres. But the metes and bounds of the last described tract as here given leave out 124.43 acres of land conveyed to the late Charles R. Rhodes and bequeathed by him to the said Mary E. Rhodes because of a supposed interlock to that extent with the Ogden and Looney tract, aggregating 4,844.07 acres, which deed gives the metes and boundaries of said tracts of land and reference is here made to same for a more particular description of said tracts of land, which deed is recorded in the office of the clerk of the County Court of said Nicholas County, in deed book No. 39 on page 192. And upon a survey of said three tracts of land, after the conveyance aforesaid, it was found that there was a shortage of 165 acres, leaving a total acreage conveyed by said deed of 4,679.07, and

[fol. 35] Whereas a controversy arose between one Abe Keffer as to the location of a certain line or lines, and said Abe Keffer by deed dated June 15th, 1904, conveyed to the said A. L. Hagerty and W. B. Stephenson his interest in any lands as surveyed by I. A. Dix, which lines were then painted, and also conveyed necessary rights of way to haul walnut timber situated on the interlock, and the said Hagerty and Stephenson to have all the Walnut timber

cut on the land in controversy; and the said Hagerty and Stephenson released to said Keffer all land outside of line run by Dix and inside of deed from Carden to Keffer which deed from Keffer to said Hagerty and Stephenson is recorded in said office in deed book No. 39 on page 200, and,

Whereas, James S. Craig, Michael C. Duffy and others by deed dated January 18th, 1906, conveyed to A. L. Hegarty and W. B. Stephenson a certain tract of land situated on the waters of Peters Creek in Summersville District, Nicholas County, West Virginia, adjoining the Benewine, Peyatte, McGee lands, the J. Haymond Robinson 950 acre survey, the tract of 135 acres patented to John H. Robinson the Rhodes 3,000 acres and the B. L. Rader land, containing $398\frac{1}{2}$ acres, and for the metes and boundaries of said land reference is here made to said deed, which deed is recorded in said office in deed book No. 43, on page 53. And the said Mary E. Rhodes, by Frank R. Ellis, her attorney-in-fact, by the first named deed, and the said James S. Craig, Michael C. Duffy and others by the last named deed, conveyed to the said A. L. Hegarty three-fourths ($\frac{3}{4}$) undivided in said tracts of land and to the said W. B. Stephenson one-fourth ($\frac{1}{4}$) undivided in said tract of land, so that the said Hegarty is now the owner of three-fourths ($\frac{3}{4}$) undivided interests in said tracts of land and the said W. B. Stephenson is the owner of one-fourth ($\frac{1}{4}$) undivided interests therein; and the said W. B. Stephenson desiring to convey a portion of his interest in said tracts of land to the parties of the second part executes this deed.

[fol. 36] Now, therefore, this deed witnesseth: That for and in consideration of one dollar in hand paid, the receipt of which is hereby acknowledged, and other valuable considerations, the parties of the first part do grant unto the parties of the second part, in the proportions hereinafter set out, the following undivided interests in and to the lands conveyed to the said A. L. Hegarty and W. B. Stephenson hereinbefore set out, to-wit:

To the said John W. Stephenson three twelfths ($\frac{3}{12}$) of one-fourth ($\frac{1}{4}$); and to the said Emma S. Thomson three-twelfths ($\frac{3}{12}$) of one-fourth ($\frac{1}{4}$); to Jennie Stephenson one-sixth ($\frac{1}{6}$) of one fourth ($\frac{1}{4}$), and to Mary S. Weimer one-sixth ($\frac{1}{6}$) of one-fourth ($\frac{1}{4}$), so therefore the parties of the first part convey by this deed to the said John W. Stephenson and Emma S. Thomson, each a one-sixteenth ($\frac{1}{16}$) in the whole of said lands and to the said Jennie Stephenson and Mary Mary S. Weimer each a one-twenty-fourth ($\frac{1}{24}$) undivided interest in said lands, leaving one-twenty-fourth ($\frac{1}{24}$) undivided interest still owned by the said W. B. Stephenson and not conveyed by this deed. The parties of the first part warrant specially the interests herein conveyed in said lands to the parties of the second part, because of the fact that he held same in trust for them.

Witness the following signatures and seals:

W. B. Stephenson. (Seal.) Sarah W. Stephenson. (Seal.)

STATE OF PENNSYLVANIA,
County of Clearfield, ss:

I, E. E. Clary, a notary Public in and for said County and State do certify that W. B. Stephenson and Sara W. Stephenson, his wife, whose names are signed to the writing above, bearing date on the 26th day of February, 1908, have this day acknowledged the same before me in my said county.

Given under my hand and official seal on this the 1st day of June, 1908.

E. E. Clary, N. P. My commission expires May, 1909. (Notarial Seal.)

[fol. 37] WEST VIRGINIA,
Nicholas County:

Court Clerk's Office

June 15, 1908.

This deed with the certificate thereon was this day admitted to
Teste: Joseph A. Alderson, Clerk of said Court.

record in said office.

(Endorsed:) District Court U. S., So. Dist. W. Va. Filed this
2nd day of July, 1923. Ira H. Mottesheard, Clerk.

[fol. 38] EXHIBIT No. 8 TO BILL OF COMPLAINT

This deed made this 12th day of January, 1911, between W. B. Stephenson and Sarah W. Stephenson, his wife, of Mahaffey, Clearfield County and State of Pennsylvania, parties of the first part, and Emma S. Thomson, of La Jose, Clearfield County and State of Pennsylvania, party of the second part.

Whereas, Mary E. Rhodes, by Frank R. Ellis, her attorney-in-fact by deed dated March 5, 1902, conveyed — A. L. Hegerty and W. B. Stephenson three certain tract- of land situated, lying and being in Hamilton and Summersville districts, in Nicholas County, West Virginia, on the head waters of Buffalo Creek, a branch of Elk River and Twenty Mile Creek and Peters Creek and some of the west branches of Muddlety, tributaries of Gauley River.

The first tract containing exclusive of three reservations of three thousand ninety-six and nine tenths (3,096.9) acres. These three reservations embraced within the lines of said tract which are excepted and reserved from the operation of this conveyance are one hundred ten and five-tenths (110.5) acres of Sinnett Rader's one hundred seventy-one and seven-tenths (171.7) acres of John Rader and one hundred and twelve one-tenth (112.1) acres of J. S. Hill.

The second tract containing nine hundred fifty-seven and two-tenths (957.2) acres, being the remainder of lot number one of Blair Survey.

The third tract containing seven hundred eighty-nine and ninety-seven one hundredths (789.97) acres, but the metes and bounds of this tract as here given omit one hundred twenty-four and forty-three-one hundredths (124.43) acres of the land conveyed to the late Charles R. Rhodes and bequeathed by him to the said Mary E. Rhodes because of a supposed interlock to that extent with the Ogden and Looney tracts aggregating forty-eight hundred and forty-four and seven one hundredths (4,884.07) acres, which deed gives the metes and bounds of said tracts of land and reference is here made to same for more particular description of said tracts of land, which [fol. 39] deed is recorded in the office of the County Court of said Nicholas County in Deed Book No. 39, page 192.

Upon survey of said three tracts of land, after the conveyance aforesaid, it was found that there was a shortage of one hundred sixty-five (165) acres, leaving a total acreage conveyed by said deed of forty-six hundred seventy-nine and seven one hundredths (4,679.07) acres.

Whereas, a controversy arose between one Abe Keiffer as to the location of a certain line or lines, and the said Abe Keiffer by deed dated June 15, 1904, conveyed to the said A. L. Hegarty and W. B. Stephenson his interest in any lands as surveyed by I. A. Dix, which lines were then painted, and also conveyed necessary rights of way to haul walnut timber situate on interlock and the said Hegarty and Stephenson to have all walnut timber cut on the land in controversy and the said Hegarty and Stephenson release to said Keiffer all land outside of line run by Dix from Carden to Keiffer, which deed from Keiffer to Hegarty and Stephenson is recorded in the office of the County Court of said Nicholas County in Deed Book No. 39, page 200.

Whereas, James S. Craig, Michael Duffy and others, by deed dated January 18, 1906, conveyed to A. L. Hegarty and W. B. Stephenson, a certain tract of land situated on the waters of Peters Creek in Summersville District, Nicholas County, West Virginia, adjoining the Benewine, Peyatte, McGee lands, the J. Haymond Robinson 950-acre survey, the tract of 135 acres patented to John H. Robinson, the Rhodes 3,000 acres and the B. L. Rader land, containing 398½ acres and for the metes and boundaries of said land reference is here made to the deed which is recorded in the office of the county court in said Nicholas County in Deed Book No. 43, page 53, and the said Mary E. Rhodes by Frank R. Ellis her attorney-in-fact, by the last mentioned deed and the said James S. Craig, Michael Duffy and others by the last named deed conveyed to the said A. L. Hegarty a three-fourths undivided interest in said tracts of land and [fol. 40] to the said W. B. Stephenson the remaining one-fourth undivided interest in said tracts of land.

Whereas, W. B. Stephenson and Sarah W. Stephenson, his wife, by deed dated the 26th day of February, 1908, recorded in the office of the County Court of said Nicholas County in Deed Book No. 48, page 51, conveyed to John W. Stephenson three-twelfths (3/12) of one-fourth (¼) of their undivided interest in said tracts of land;

to Emma S. Thomson three-twelfths ($3/12$) of one-fourth ($1/4$) of their undivided interest in said tracts of land; to Jennie Stephenson one sixth ($1/6$) of one fourth ($1/4$) of their undivided interest in said tracts of land; to Mary S. Weimer one-sixth ($1/6$) of one fourth ($1/4$) of their undivided interest in said tracts of land. This left a one-twenty-fourth ($1/24$) undivided interest in said tracts of land remaining in the said W. B. Stephenson.

Whereas, J. Haymond Robinson conveyed a certain tract of land containing one hundred thirty-five (135) acres to A. L. Hegarty by deed dated the 17th day of July, 1903, the metes and bounds of which are described in said deed and reference is here made to same for a more particular description of said tract of land, which deed is recorded in the office of the County Court of said Nicholas County in Deed Book No. 37, page 524.

Whereas, W. B. Stephenson had paid one-fourth ($1/4$) of the purchase money for said tract of one hundred and thirty-five (135) acres of land and was entitled to one-fourth ($1/4$) of the interest thereof, and for that consideration and at the request of the said W. B. Stephenson the said A. L. Hegarty by deed dated 16th day of March, 1908, and recorded in the office of the County Court in said Nicholas County in Deed Book 49, page 294, conveyed this one-fourth ($1/4$) interest in said tract of land as follows: To John W. Stephenson three-twelfths ($3/12$) of the one fourth ($1/4$) of undivided interest of said tract of land; to Emma S. Thomson three-twelfths ($3/12$) of one undivided one-fourth ($1/4$) of undivided interest in said tract of land; To Jennie Stephenson one-sixth ($1/6$) of one-fourth ($1/4$) of [fol. 41] undivided interest of said tract of land; To Mary S. Weimer one-sixth ($1/6$) of one-fourth ($1/4$) of undivided interest of said tract of land; To W. B. Stephenson one-twenty-fourth ($1/24$) of undivided interest of said tract of land.

Whereas, the said W. B. Stephenson desires to convey his undivided one-twenty-fourth ($1/24$) interest in the said four tracts of land to the party of the second part — executes this deed.

Now, therefore, this deed witnesseth, that for and in consideration of the sum of Three Thousand (\$3,000.00) dollars in hand paid, the receipt of which is hereby acknowledged, and other valuable consideration, the said parties of the first part do grant, sell and convey unto the party of the second part an undivided one-twenty-fourth interest in and to the said four described tracts of land.

The said W. B. Stephenson and Sarah W. Stephenson, his wife, covenants to and with the said Emma S. Thomson, that they have the right to convey the said land to the grantee, and that they warrant generally the property hereby conveyed.

W. B. Stephenson. (Seal.) Sarah W. Stephenson. (Seal.)

STATE OF PENNSYLVANIA,
County of Clearfield, ss:

I, Andrew McQuown, a Notary Public in and for the said County and State aforesaid, do certify that W. B. Stephenson and Sarah W. Stephenson his wife, whose names are signed to the writing hereto

annexed, bearing date on the 12th day of January, 1911, have acknowledged the same before me in my county as their act and deed and desire the same to be recorded as such.

Given under my hand and official seal the 20th day of January, A. D. 1911.

Andrew McQuown, Notary Public. My commission expires at the end of the next session of the Legislature. (Notarial Seal.)

[fol. 42] STATE OF WEST VIRGINIA,
Nicholas County:

Court Clerk's Office

January 27, 1911.

This deed was this day presented in said office, and thereupon, together with the certificate thereto annexed, is admitted to record.

Teste:

P. N. Wiseman, Clerk.

(Endorsed:) District Court U. S., So. Dist. W. Va. Filed this 2nd day of July, 1923. Ira H. Mottesheard, Clerk.

[fol. 43] EXHIBIT TO BILL OF COMPLAINT

SUMMONS AND SHERIFF'S RETURN

State of West Virginia to the sheriff of Nicholas County, Greeting:

We command you that you summon W. B. Stephenson, John W. Stephenson, Emma Thomson, Jennie Stephenson and Mary S. Weimer, to appear before the Judge of our circuit court for Nicholas County at Rules to be held in the Clerk's office of said Court, the first Monday in March next to answer a Bill in Chancery exhibited against them in said Court, by F. E. Cawley, and have then and there this writ and how you have executed it.

Witness Jennings J. Summers, Clerk of our said Circuit Court, at the Court House aforesaid, the 27th day of February, 1920, and in the 57th year of the State.

Jennings J. Summers, Clerk.

The within named W. B. Stephenson, John W. Stephenson, Emma Thomson, Jennie Stephenson, and Mary S. Weimer not found in my bailiwick, this 28th day of February, 1920.

W. E. Marto, S. N. C., by J. A. Hughes, Deputy.

ORDER OF PUBLICATION

STATE OF WEST VIRGINIA:

At rules held in the Clerk's Office of the Circuit Court of Nicholas County, on Monday the 1st day of March, 1920, the following order was entered:

In Chancery

F. E. CAWLEY, Plaintiff,

vs.

W. B. STEPHENSON, EMMA THOMAS, JENNIE STEPHENSON, and MARY S. WEIMER, Defendants

The object of the above entitled suit is to set aside and annul two certain deeds made by W. B. Stephenson and wife, the first [fol. 44] dated February 26th, 1908, and the second dated January 12th, 1911, wherein they conveyed a one-fourth undivided interest in four certain tracts of land situate in Nicholas County, West Virginia, in Summersville and Hamilton districts, known as the Hegarty-Stephenson land, and containing about — acres, to the defendants, John W. Stephenson, Emma Thomson, Jennie Stephenson, and Mary S. Weimer, and to subject said interest in said real estate to sale for the purpose of satisfying certain judgments recovered in the Court of Common Pleas, of Clearfield County, Pennsylvania, against the said W. B. Stephenson, which said judgments are in the name of said F. E. Cawley.

And it appearing by affidavit filed in this cause that the said W. B. Stephenson, John W. Stephenson, Emma Thomson, Jennie Stephenson and Mary S. Weimer are non-residents of this state, it is ordered that they do appear here within one month after the date of the first publication hereof and do what is necessary to protect their interests.

A copy. Teste:

Jennings J. Summers, Clerk. Brown, Wolverton & Ayres,
Attorneys.

I, A. Lee Stewart, Editor and Publisher of The Nicholas Chronicle, a weekly newspaper published at Summersville, in the County of Nicholas, and State of West Virginia, do certify that the hereto attached "order of publication" in the Chancery Cause of F. E. Cawley, plaintiff, vs. W. B. Stephenson and others, defendants, was published in said newspaper once each week for four successive weeks, commencing on the 18th day of March, 1920.

Given under my hand this fifth day of May, 1920.

A. Lee Stewart, Editor and Publisher.

Fee for publication, \$7.68.

[fol. 45] THE BILL OF COMPLAINT OF F. E. CAWLEY AGAINST W. B. STEPHENSON, JOHN W. STEPHENSON, EMMA S. THOMPSON, JENNIE STEPHENSON, AND MARY S. WEIMER

Filed in the Circuit Court of Nicholas County, West Virginia
To the Honorable Jake Fisher, judge of said court:

Plaintiff complains and says that on the 7th day of February, 1908, one, Geo. H. Lum, and the defendant, W. B. Stephenson, made their four promissory notes in writing, each in the sum of Five Thousand (\$5,000.00) dollars, two of which said notes were payable on the 7th day of August, 1908, one of said notes was payable three years after date, and the other payable four years after date, all of the said four notes payable to the order of F. E. Cawley, your plaintiff, at Little Falls, in the State of Minnesota, with interest from date, and subscribed their names to the said notes and delivered them to plaintiff and thereby promised to pay to the order of plaintiff the sum of Twenty Thousand (\$20,000.00) Dollars in the manner, and at the place, and upon the dates aforesaid; and plaintiff alleges that at the time the four promissory notes aforesaid were delivered to him, he also received from the defendant, W. B. Stephenson, with each of said notes, a certificate of Fifty (50) Shares of the Capital stock of the Northwestern Milling Company as collateral security for the payment of said notes.

Plaintiff further complaining says that after the delivery to him by the said defendant, W. B. Stephenson, of the four promissory notes, as aforesaid, for value received he assigned, set over, transferred and endorsed three of said notes to other persons, as follows: To C. J. Cawley one of said notes in the amount of Five Thousand (\$5,000.00) Dollars, due and payable on August 7, 1908; to Sarah H. Cawley, one of said notes due and payable three years after date; [fol. 46] and to Frank Stanton Cawley one of said notes, due and payable four years after date.

Plaintiff further complaining says that the said Geo. H. Lum and the said W. B. Stephenson, having neglected and refused to pay the said promissory note still held by plaintiff, he, your plaintiff, on the 4th day of February, 1911, instituted his action in assumpsit in Court of Common Pleas for the County of Clearfield in the Commonwealth of Pennsylvania to recover of the defendants, Geo. H. Lum and W. B. Stephenson, the sum of Five Thousand (\$5,000.00) Dollars, the face of said note; together with interest thereon from the 7th day of August, 1908, and the costs of the suit; that on the 18th day of February, 1911, the defendant W. B. Stephenson appeared and filed his affidavit of defense, claiming and pretending therein that he had a full and just defense to said action; that at the May term, 1911, of said court, the said defendant by his petition and affidavit secured the continuance of said action, and again at the December term thereof secured a continuance, that finally on the 13th day of September, 1915, plaintiff recovered a judgment predicated on said promissory note, in said court, against said defendants for the sum of Five Thousand (\$5,000.00) Dollars, with

interest thereon from said 7th day of August, 1908, until and paid and costs thereof, amounting to \$41.55; that on the 4th day of February, 1914, the said C. J. Cawley, the said Sarah H. Cawley and the said Frank Stanton Cawley, the several assignees of the three other promissory notes executed to plaintiff and by him transferred and assigned as aforesaid, each instituted his several action in the said court against the said Geo. H. Lum and the said W. B. Stephenson to recover the amount due on each note with interest due thereon; that on the 25th day of February, 1914, the defendant, W. B. Stephenson, appeared and filed his affidavit of defense to each of said actions, claiming and pretending as before that he had a full [fol. 47] and just defense to each and every of said actions; that on the 13th day of September, 1915, each of said plaintiffs in said actions recovered judgments predicated on the several promissory notes assigned to them as aforesaid, as follows: The said C. J. Cawley for the sum of Four Thousand and Five Hundred (\$4,500.00) Dollars with interest from said 7th of August, 1908, until paid and costs thereof amounting to \$20.25; the said Sarah H. Cawley for the sum of Five Thousand (\$5,000.00) Dollars, with interest from said 7th day of August, 1908, until paid and costs thereof, amounting to \$20.25; and the said Frank Stanton Cawley for the sum of Five Thousand (\$5,000.00) Dollars, with interest from said 7th day of August, 1908, until paid, and costs thereof, amounting to \$20.25.

Plaintiff further complaining says that for value received the several judgments aforesaid in favor of the said C. J. Cawley, the said Sarah H. Cawley, and the said Frank Stanton Cawley, respectively, were each and severally assigned, transferred and set over in writing bearing date on the 29th day of November, 1919, to your plaintiff, F. E. Cawley, and said assignment duly noted on the records of said court on the 19th day of January, 1920. All of which will more fully and at large appear from the exemplified record in each of said actions, to-wit: F. E. Cawley vs. George H. Lum and W. B. Stephenson, and Frank Stanton Cawley v. George H. Lum and W. B. Stephenson, Sarah H. Cawley vs. George H. Lum and W. B. Stephenson and C. J. Cawley vs. George H. Lum and W. B. Stephenson from the records of the said Court of Common Pleas of Clearfield County, duly authenticated, showing said four promissory notes, their assignments, and the judgments rendered on each of them and the assignments to your plaintiff of said judgments, and herewith filed, marked respectively, "Exhibit No. 1," "Exhibit No. 2," "Exhibit No. 3," and "Exhibit No. 4," and prayed to be read as part hereof; and plaintiff avers that said judgments are [fol. 48] still in full force and effect and remain wholly unpaid and entirely unsatisfied.

Plaintiff further complaining, says that on the 7th day of February, 1908, the defendant W. B. Stephenson, was the owner in fee of a one-fourth interest undivided in certain tracts of land, situate on the headwaters of Buffalo Creek, Twenty Mile Creek, Peters Creek, and some of the west branches of Muddlety Creek, in Summersville and Hamilton Districts, in Nicholas County, West Virginia, and conveyed to the said W. B. Stephenson and one A. L. Hagerty as

follows: three tracts aggregating 4679.07 acres, conveyed from Mary E. Rhodes, by Frank R. Ellis, her attorney, to said defendant, and said Hagerty by deed bearing date of March 5th, 1902, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia, in Deed Book No. 39, at page 192; a tract of 398½ acres conveyed from James Craig and others by deed bearing date of January 18th, 1906, and of record in said office in Deed Book No. 43, at page 53; and a tract of 135 acres conveyed from J. Raymond Robinson to said Hagerty by deed bearing date of July 17th, 1903, and of record in said office in Deed Book No. 37, at page 524.

Plaintiff further complaining says that in the year 1907 the said defendant, W. B. Stephenson, with others, went into the flour milling business at Little Falls in the State of Minnesota, and incorporated the Northwestern Milling Company at that place; that the other incorporators had little money, but had experience in the business, and said Stephenson was to furnish the money or credit on which to obtain money; that in order to furnish working capital for this milling company the said Stephenson issued a large number of his notes, endorsed by the Northwestern Milling Company, and these notes were sold readily, as the said Stephenson owned valuable real estate in Pennsylvania, Iowa and West Virginia, and represented by a sworn statement that his net worth was something over \$200,000.00; that soon after the issue of some of these notes, in [fol. 49] 1907, the said defendant, W. B. Stephenson, conveyed to his sister, Emma Thomson, his real estate in the counties of Benton and Tama, State of Iowa, by deed of April 22nd, 1907; that the Northwestern Milling Company did not succeed in business, and other notes were issued in 1908, by said defendant, W. B. Stephenson, including the four said notes of \$5,000.00 each, bearing date on February 7th, 1908, payable to the order of F. E. Cawley, your plaintiff, as hereinbefore set out; that soon after the execution of said notes to plaintiff, the said W. B. Stephenson conveyed to his brother, said John W. Stephenson, three-twelfths of his one-fourth interest in said real estate in Nicholas County, to his sister, the said Emma Thomson, three-twelfths of said one-fourth therein; to his sister, said Mary S. Weimer, one-sixth of said one-fourth therein, and to said Jennie Stephenson, one-sixth of said one-fourth therein, by deed bearing date February 26, 1908, and of record in said office in Deed Book No. 48, at page 51, leaving to the said W. B. Stephenson a one-twenty-fourth interest in said lands; that said W. B. Stephenson paid the first instalment of interest on said notes held by plaintiff, and made one partial payment of Five Hundred (\$500.00) Dollars on one of said notes, as will appear from the exemplified records herewith exhibited; that no further payment of interest or principal was made and when pressed for payment and when your plaintiff was preparing to bring suit on said notes, the said W. B. Stephenson, by deed bearing date on January 12th, 1911, conveyed his remaining one-twenty-fourth interest in said Nicholas County lands to his sister, defendant, Emma Thomson, which deed is of record in said Nicholas County Court Clerk's Office in Deed Book No. — at page —; that suit was instituted as aforesaid on

said notes; and that the said defendant W. B. Stephenson, after interposing a pretended defense and after continuing said action for a long time, confessed judgment and abandoned all defense thereto.

[fol. 50] Plaintiff further complaining says that at the time of the conveyance of February 26th, 1908, the defendant John W. Stephenson, lived in Minnesota, and had full knowledge of the financial condition of said Northwestern Milling Company, and knew of his said brother, W. B. Stephenson, issuing the said notes of February 7th, 1908; that the sisters, the said Emma Thomson, the said Jennie Stephenson, and the said Mary S. Weimer, likewise knew of said transactions, and they and their said brother knew that said Northwestern Milling Company was insolvent at the time of this conveyance, and knew that said W. B. Stephenson was indebted in large sums for which he had executed his notes, and knew that there was a move to throw him into bankruptcy. And plaintiff charges that the said conveyance of February 26th, 1908, made by the said W. B. Stephenson, was for the sole purpose of hindering, delaying and defrauding his creditors, and especially to evade, hinder and delay the payment of said promissory notes of February 7th, 1908, of which said fraudulent intent the said defendants all had notice; and that said notes were then a subsisting obligation against the said W. B. Stephenson.

Plaintiff further complaining says that at the time of the conveyance of the one-twenty-fourth undivided interest in said lands, by deed of January 12th, 1911, two of said notes of February 7th, 1908, had long been due and unpaid, and a large sum of interest had accrued on all of said four notes and was due and unpaid; that your plaintiff was demanding payment and the said W. B. Stephenson anticipated the bringing of the action by plaintiff instituted in said Common Pleas Court of Clearfield County, as aforesaid, and said conveyance by defendant, W. B. Stephenson, to his sister defendant, Emma Thomson, was made for the sole purpose of hindering, delaying and defrauding the creditors of said Stephenson, and more especially to evade, hinder and delay the payment of said promissory notes of February 7th, 1908, of which fraudulent intent and purpose [fol. 51] pose the said Emma S. Thomson had full notice and which notes were then a subsisting obligation against the said W. B. Stephenson; that said deed was executed on the 12th day of January, 1911, and caused to be recorded on the 27th day of January, 1911, about one week before the institution of said action. And plaintiff here charges that defendant Emma Thomson had no means to purchase said interest in said real estate, and paid no consideration therefor, but that she conspired and colluded with her said brother to pass said interest out of his name and to keep the same away from his creditors and especially to hinder, delay and defraud your plaintiff.

And plaintiff further complaining says that the transfer of the Iowa properties by the said W. B. Stephenson to his said sister, the defendant, Emma S. Thomson, by deed of April 22nd, 1907: the conveyance of the five-twenty-fourth interest in the lands in Nicholas County by said W. B. Stephenson to his said brothers and sisters, the

defendants herein, by deed of February 26th, 1908; and the conveyance of the remaining one-twenty-fourth interest in said lands, by said W. B. Stephenson to his sister, the said Emma S. Thomson, by the deed of January 12th, 1911, were all made by the said grantor in pursuance of his fraudulent design to hinder, delay and defraud his creditors, and especially to hinder, delay and evade the payment of said promissory notes of February 7th, 1908. And plaintiff charges, upon information and belief, that the said defendants, each had notice of said fraudulent purpose, and connived and conspired with said grantor to carry out his fraudulent designs; that no consideration passed in said conveyances; that said deeds were voluntary and fraudulent; and that said W. B. Stephenson at the time of said conveyances was and still is insolvent, of all which said defendants had notice.

The said deeds of March 5th, 1902, July 17th, 1903, January 18th, [fol. 52] 1906, and the deed from Abe Keifer to said Hegarty and Stephenson, dated on June 15th, 1904, showing the conveyance of the one-fourth interest in said lands to said W. B. Stephenson, and the said deeds of February 26th, 1908, and of January 12th, 1911, by which the said W. B. Stephenson conveyed his said interest to his said brother and sisters as aforesaid, are filed herewith as part hereof as "Exhibit No. 5," "Exhibit No. 6," "Exhibit No. 7," "Exhibit No. 8," "Exhibit No. 9," and "Exhibit No. 10," respectively.

Your plaintiff therefore prays that the deeds of February 26th, 1908, and of January 12th, 1911, be set aside as fraudulent and void so far as plaintiff's rights and interests are concerned; that said one-fourth interest in said lands in Nicholas County be sold to satisfy said judgments and the costs of this suit, and grant to your plaintiff general relief.

F. E. Cawley, by Counsel. Brown, Wolverton & Ayres, Attorneys for Plaintiff.

AFFIDAVIT OF THOMAS W. AYRES FOR ORDER OF PUBLICATION

[Title omitted]

Thomas W. Ayres, being by me first duly sworn says that he is attorney for the plaintiff in the above styled cause and that the said defendants, W. B. Stephenson, John W. Stephenson, Emma Thomson, Jennie Stephenson and Mary S. Weimer are non-residents of the State of West Virginia.

Thomas W. Ayres.

[fol. 53] Taken, sworn to and subscribed before me this the 27th day of February, 1920. Jennings J. Summers, Clerk of the Circuit Court of Nicholas County, West Virginia.

ATTACHMENT AFFIDAVIT OF THOMAS W. AYRES

[Title omitted]

Thomas W. Ayres, being by me first duly sworn, upon his oath says that he is attorney for F. E. Cawley, plaintiff in the above styled cause; that he, as such attorney, has instituted a suit in equity against the defendants, W. B. Stephenson, John W. Stephenson, Emma Thomson, Jennie Stephenson, and Mary S. Weimer, in the Circuit Court of Nicholas County, West Virginia, to recover of said W. B. Stephenson, a debt arising out of contract in the sum of \$19,602.10, with interest from the 7th day of August, 1908, comprising a total amount to this date of \$33,222.10. Also to set aside and annual two certain deeds made by the said W. B. Stephenson and wife, the first bearing date February 26, 1908, and the second bearing date January 12, 1911, wherein they conveyed a one-fourth interest undivided in four certain tracts of land in said Nicholas County to defendants, John W. Stephenson, Emma Thomson, Jennie Stephenson, and Mary S. Weimer, and to subject said interest in said real estate of said W. B. Stephenson to sale for the purpose of satisfying any recovery in such suit. That on the 13th day of September, 1915, the [fol. 54] said F. E. Cawley recovered a judgment in the Court of Common Pleas in and for the County of Clearfield, in the Commonwealth of Pennsylvania against the said W. B. Stephenson and one George H. Lum for \$5,000.00, with interest from August 7, 1908, and \$41.25 costs of suit; that on the same date one C. J. Cawley recovered a judgment in said court against the said W. B. Stephenson and said George H. Lum for \$4,500.00, with interest from August 7, 1908, and \$20.25 costs of suit; that on the same date one, Frank Stanton Cawley, recovered a judgment in said court against the said W. B. Stephenson and said George H. Lum for \$5,000.00, with interest from August 7, 1908, and \$20.25 costs of suit; and that on the same date one, Sarah H. Cawley, recovered a judgment in said court against the said W. B. Stephenson and said George H. Lum for \$5,000.00, with interest from August 7, 1908, and \$20.25 costs of suit; that the said last three judgments named were on the 19th day of January, 1920, duly assigned to said F. E. Cawley, who is now the owner of the same; that said judgments, with the interest and costs thereon, remain unpaid and are due from said W. B. Stephenson to said F. E. Cawley; that said W. B. Stephenson, as the said F. E. Cawley charges, and as affiant believes, conveyed by the two deeds aforesaid, for the purpose of avoiding said debts and to prevent the enforcement and collection of said judgments, his one-fourth interest in said tracts of land to John W. Stephenson, Emma Thomson, Jennie Stephenson and Mary S. Weimer; that by reason of the circumstances connected therewith, the said conveyances are voluntary, null and void, and the said one-fourth interest in said real estate is still subject to any attachment and decrees against, or debts of, the said W. B. Stephenson; that affiant believes that the said F. E. Cawley is justly entitled to recover in said suit, at least, the amount

of \$33,222.10, and affiant believes the following ground exists for the said attachment; that the said W. B. Stephenson, John W. [fol. 55] Stephenson, Emma Thomson, and Mary S. Weimer are non-residents of the State of West Virginia.

Thomas W. Ayres.

Taken, sworn to and subscribed before me this 27th day of February, 1920. Jennings J. Summers, Clerk of the Circuit Court of Nicholas County, West Virginia.

ORDER OF ATTACHMENT

[Title omitted]

To the sheriff of Nicholas County, Greeting:

The plaintiff in this case having filed his affidavit as required by law, the Sheriff of the County of Nicholas, or any constable of any district therein, to whom this order may come, is required, in the name of the State of West Virginia, to attach the estate of the defendant W. B. Stephenson, sufficient to pay the sum of \$33,222.10, and the costs of this suit, and make return of his proceedings under this order at Rules to be held for the Circuit Court of said County on the 1st day of March, 1920.

Witness, Jennings J. Summers, Clerk of said Court, this 27th day of February, 1920.

Jennings J. Summers, Clerk.

Received the within order of attachment on the 27th day of February, 1920, at 7:30 P. M.

W. E. Morton, S. N. C., by J. A. Hughes, Deputy.

[fol. 56] Executed the within order of attachment the 28th day of February, 1920, at 11:00 o'clock A. M., by levying the same upon a one-fourth interest undivided in each of the following four tracts of land, to-wit:

First. A tract of 4,679.07 acres, located in Hamilton and Summersville Districts of Nicholas County, West Virginia, on the headwaters of Buffalo Creek, a branch of Elk River, and Twenty Mile creek and Peters Creek, and some of the west branches of Muddlety Creek, tributaries of Gauley River, and being the same lands conveyed by Mary E. Rhodes, by Frank R. Ellis, her attorney in fact, to A. L. Hagerty and W. B. Stephenson, by deed dated March 5th, 1902, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia. Said land being described in said deed as containing three tracts.

Second. A certain tract of land and the rights of way connected therewith, being the same land and rights of way conveyed by Abe

Keifer to A. L. Hagerty and W. B. Stephenson, by deed dated June 15th, 1904, and recorded in the office of the Clerk of the County Court of said Nicholas County, West Virginia.

Third. A certain tract of 398-1/2 acres, situate in Summersville District, Nicholas County, West Virginia, on the waters of Peters Creek, adjoining the Brenewine, Peyatte and McGee land, the J. Haymond Robinson 950 acre survey, a tract of 135 acres patented to John H. Robinson, the Rhodes 3,000 acres and the B. L. Rader land, and being the same tract of land conveyed to A. L. Hagerty and W. B. Stephenson by James S. Craig, Michael Duffy and others by deed dated January 8th, 1906, and of record in said county Clerk's office of said Nicholas County, West Virginia.

The three above described tracts of land being the same tracts of land a five-twenty-fourth interest undivided in which was conveyed by W. B. Stephenson and wife to John W. Stephenson, Emma Thomson [fol. 57] son, Jennie Stephenson, and Mary S. Weimer, by deed dated the 26th day of February, 1908, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia, in the following proportions, viz:

- To John W. Stephenson an undivided 3/12 of an undivided 1/4.
- To Emma Thomson an undivided 3/12 of an undivided 1/4.
- To Jennie Stephenson an undivided 1/6 of an undivided 1/4.
- To Mary S. Weimer an undivided 1/6 of an undivided 1/4.

Fourth. A certain tract of land containing 135 acres, lying on the head waters of Peters Creek and the head waters of Meadow Creek, a branch of Muddlety, adjoining 3,000 acres patented to John H. Robinson, and being the same tract of land conveyed by J. Haymond Robinson and others to A. L. Hagerty by deed dated the 17th day of July, 1903, and of record in the County Court Clerk's office of said county; and the same tract of land a one-fourth interest undivided in which was conveyed by A. L. Hagerty to W. B. Stephenson, Emma Thomson, Jennie Stephenson, Mary S. Weimer and W. B. Stephenson in the following proportions, viz:

- To John W. Stephenson an undivided 3/12 of an undivided 1/4,
- To Emma S. Thomson an undivided 3/12 of an undivided 1/4,
- To Jennie Stephenson an undivided 1/6 of an undivided 1/4,
- To Mary S. Weimer an undivided 1/6 of an undivided 1/4.
- To W. B. Stephenson an undivided 1/24 interest,

said deed bearing date March 16th, 1908, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia.

The four above described tracts of land being the same tracts of land a one-twenty-fourth interest undivided in which were conveyed by W. B. Stephenson and Sarah M. Stephenson, his wife to Emma S. Thomson, by deed dated January 12th, 1911, and of record in said county clerk's office of said Nicholas County, West Virginia.

W. E. Morton, S. N. C., by J. A. Hughes, Deputy.

[fol. 58]

[Title omitted]

JUDGMENT

This cause came on this day to be heard upon the order of publication duly executed as to the defendants, who are non-residents and have been regularly proceeded against as such; upon the bill and its exhibits duly filed at rules, the decree nisi properly taken thereon and regularly set for hearing by the plaintiff; upon the affidavit filed herein for an attachment; upon the attachment issued herein, the levy thereof and return thereon made by the officer levying the same; and upon the arguments of counsel; upon consideration of all which the court is of opinion to and doth find that there is now due and owing from the defendant, W. B. Stephenson, to the plaintiff, on account of the debt evidenced by *by* the four certain judgments in the bill and proceedings herein fully set out, including the interest thereon to this date, after allowing all payments, credits and sets-off to which the defendant is entitled, the sum of \$34,285.60, and that the said plaintiff ought to recover of and from the said defendant, W. B. Stephenson, the said sum of \$34,285.60, with interest thereon from this date until paid.

It is therefore, adjudged, ordered and decreed that the plaintiff, F. E. Cawley, do recover of and from the defendant, W. B. Stephenson, the said sum of \$34,285.60, the aggregate amount of said judgments, including the interest thereon to this date and the costs awarded thereon with interest on said aggregate amount from this date until paid.

[fol. 59] And it further appearing to the satisfaction of the court from the papers and evidence in this case that the said deed from W. B. Stephenson and Sarah Stephenson, his wife, to John W. Stephenson, Emma S. Thompson, Jennie Stephenson, and Mary S. Weimer, bearing date the 26th day of February, 1908, conveying to the said John W. Stephenson three-twelfths of a one-fourth undivided interest, to the said Emma S. Thompson three-twelfths of a one-fourth undivided interest, to the said Jennie Stephenson one-sixth of an undivided one-fourth interest, and to the said Mary S. Weimer a one-sixth of an undivided one-fourth interest in the several tracts of land described in said deed, and the deed from W. B. Stephenson and Sarah W. Stephenson, his wife, to Emma S. Thompson, bearing date *one* the 12th day of January, 1911, conveying a one-twenty-fourth interest in the lands therein described were made to hinder, delay and defraud the creditors of the said W. B. Stephenson and especially the plaintiff, F. E. Cawley, in respect to the debt and demand herein adjudged to said plaintiff, it is therefore further adjudged, ordered and decreed that the said deeds, bearing date as aforesaid, be and the same are hereby set aside and held for naught, but so far only as the said debt and demand of said plaintiff, F. E. Cawley is concerned.

And it further appearing to the court that this is a proceeding by order of publication and attachment of the property of the said defendant found in this county, without any personal service on the

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defendants, and the said defendants not having entered their appearance to this action, the court doth not enter any personal decree against the said defendant, W. B. Stephenson; but doth find and adjudge order and decree that the property of the said defendant, W. B. Stephenson, levied on of said attachment is liable to the payment of the said sum of \$34,285.60, with interest thereon from date until paid, and the costs of this suit and attachment issued in: and it further appearing to the court that there was levied [60] upon, under and by virtue of the said order of attachment in set out the following real estate; A one-fourth interest undivided in each of the following four tracts of land to-wit:

First. A tract of 4,679 acres, located in Hamilton and Summersville Districts of Nicholas County, West Virginia, on the head waters of Buffalo Creek, a branch of Elk River, and Twenty Mile and Peters Creek, and some of the west branches of Muddlety Creek, and being the same lands conveyed by deed to A. L. Hagerty, E. Rhodes, and W. B. Stephenson, by deed dated March 5th, 1902, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia. Said land being described in said deed as containing three tracts.

Second. A certain tract of land and the rights of way connected therewith, being the same land and rights of way conveyed by deed to A. L. Hagerty and W. B. Stephenson, by deed dated June 1st, 1904, and — record in the office of the Clerk of the County Court of said Nicholas County, West Virginia.

Third. A certain tract of three hundred and ninety-eight and one-half acres, situate in Summersville District, Nicholas County, West Virginia, on the waters of Peters Creek, adjoining the Brenewine, Ratte, and McGee land, the J. Haymond Robinson 950 acre survey, a tract of 135 acres patented to John H. Robinson, the Rhodes 100 acres and the B. L. Rader land, and being the same tract of land conveyed to A. L. Hagerty and W. B. Stephenson by James S. Sig. and Michael Duffy and others by deed dated January 8th, 1906, and of record in said county clerk's office of said Nicholas County, West Virginia.

The three above described tracts of land being the same tracts of land and a five-twenty-fourth interest undivided in which was conveyed by deed to W. B. Stephenson and wife to John W. Stephenson, Emma Thomson, Jennie Stephenson, and Mary S. Weimer, by deed dated [61] the 26th day of February, 1908, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia, the following proportions, viz:

To John W. Stephenson and undivided $\frac{3}{12}$ of and undivided one-fourth.

To Emma Thomson an undivided $\frac{3}{12}$ of an undivided one-fourth.

To Jennie Stephenson an undivided $\frac{1}{6}$ of and undivided one-fourth.

To Mary S. Weimer *and* undivided $1/6$ of an undivided one-fourth.

Fourth. A certain tract of land containing 135 acres, lying on the head waters of Peters Creek and the head waters of Meadow Creek, a branch of Muddlety, adjoining three-thousand acres patented to John H. Robinson, and being the same tract of land conveyed by J. Haymond Robinson and others to A. L. Hagerty by deed dated the 17th day of July, 1903, and of record in the county court clerk's office of said county; and the same tract of land a one-fourth interest undivided in which was conveyed by A. L. Hagerty to W. B. Stephenson, Emma Thomson, Jennie Stephenson, Mary S. Weimer and W. B. Stephenson in the following proportions, viz:

To John W. Stephenson *and* undivided $3/12$ of an undivided one-fourth,

To Emma S. Thomson an undivided $3/12$ of an undivided one-fourth,

To Jennie Stephenson an undivided $1/6$ of an undivided one-fourth,

To Mary S. Weimer an undivided $1/6$ of an undivided one-fourth,

To W. B. Stephenson an undivided $1/24$ interest,

said deed bearing date March 16th, 1908, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia.

The four above described tracts of land being the same tracts of land a $1/24$ interest undivided in which were conveyed by W. B. [fol. 62] Stephenson and Sarah W. Stephenson, his wife, to Emma S. Thomson, by deed dated January 12th, 1911, and of record in said county clerk's office of said Nicholas County, West Virginia. All the above described property belonging to the said defendant, W. B. Stephenson, and having been levied upon to satisfy the plaintiff's said debt and demand; and it appearing to the satisfaction of the court that the property is still under the levy of said attachment, and is liable to the payment of said debt and claim of the plaintiff, it is therefore adjudged, ordered and decreed that the said W. B. Stephenson do pay unto the said F. E. Cawley within thirty days from the rising of this court the said sum of \$34,285.60 with legal interest thereon from this date until paid and also the costs of this suit and attachment issued therein; and in default thereof the said property, or so much thereof as may be necessary, be sold to pay the plaintiff's said debt and interest thereon from this date, and the costs of this suit and attachment issued therein.

And it is further adjudged, ordered and decreed that for the purpose of making such sale the court doth hereby appoint, W. G. Brown, J. M. Wolverton and T. W. Ayres, as Special Commissioners, with power in either to act, who shall advertise the time, terms and place of such sale for four successive weeks in the Nicholas Republican, a weekly newspaper published in this county, and which sale shall be made upon the following terms: One-third of the purchase price cash in hand on the day of sale; the remainder in two equal installments due in one and two years from the date of the sale with

interest from date, evidenced by promissory notes, and the Special Commissioners to retain the title to said land to secure the payment of said notes.

But before said special commissioners shall make such sale they shall execute a bond with approved security before the Clerk of this [fol. 63] court in the penalty of \$30,000.00, conditioned for the faithful performance of their duties as such special commissioners, and to account for and pay over all money which may come into their hands by virtue of such sale.

And it is further adjudged, ordered and decreed that before said sale be made, the said plaintiff or some one for him, shall give bond with sufficient security before the Clerk of this court in the penalty of \$30,000.00, conditioned that the plaintiff will perform such future order as may be made by the court in this suit in case the said defendants shall hereafter appear and make defense herein within the time prescribed by law; and the said W. G. Brown, J. M. Wolverton and T. W. Ayres, Special Commissioners, as aforesaid, shall report to this court at the next term thereof, all real estate they may have sold under this decree, with the name of the purchaser, the sum for which it sold and the time and place of such sale.

[fol. 64] COMMISSIONER'S SALE OF VALUABLE REAL ESTATE

Pursuant to a decree of the Circuit Court of Nicholas county, made in the Chancery cause of F. E. Cawley, Plaintiff, vs. W. B. Stephenson, John W. Stephenson, Emma Thomson, Jennie Stephenson and Mary S. Weimer, Defendants, we will on the 18th day of May, 1921, at the Front Door of the Court House of Nicholas County, proceed to sell at public auction to the highest bidder a one-fourth interest undivided in each of the following three tracts of land:

First. A tract of 4,679 acres, located in Hamilton and Summersville Districts of Nicholas County, West Virginia, on the head waters of Buffalo Creek, a branch of Elk River, and Twenty Mile and Peters Creek, and some of the west branches of Muddlety Creek, tributaries of Gauley River, and being the same lands conveyed by Mary E. Rhodes, by Frank R. Ellis, her attorney in fact, to A. L. Hagerty and W. B. Stephenson by deed dated March 5th, 1902, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia, in Deed Book No. 39 at page 192. Said land being described in said deed as containing three tracts.

Second. A certain tract of land and the rights of way connected therewith, being the same land and rights of way conveyed by Abe Keifer to A. L. Hagerty and W. B. Stephenson, by deed dated June 15th, 1904, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia.

Third. A certain tract of three hundred and ninety-eight and one-half acres, situate in Summersville District, Nicholas County, West Virginia, on the waters of Peters Creek, adjoining the Brenewine,

Peyatte and McGee lands, the J. Haymond Robinson 950 acres survey, a tract of 135 acres patented to John H. Robinson, the Rhodes 3,000 acres and the B. L. Rader land, and being the same tract of land conveyed to A. L. Hagerty and W. B. Stephenson by James S. Craig and Michael Duffy and others by deed dated January 18th, [fol. 65] 1906, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia, in Deed Book No. 43 at page 53.

The three above described tracts of land being the same tracts of land a five-twenty-fourth interest undivided in which was conveyed by W. B. Stephenson and wife to John W. Stephenson, Emma Thomson, Jennie Stephenson, and Mary S. Weimer, by deed dated the 26th day of February, 1908, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia, in Deed Book No. 48 at page 51.

And also a one twenty-fourth interest undivided in the following tract of land:

A certain tract of land containing one hundred and thirty-five (135) acres, lying on the head waters of Peters Creek, and the head waters of Meadow Creek, a branch of Muddlety, adjoining three thousand acres patented to John H. Robinson, and being the same tract of land conveyed by J. Haymond Robinson and others to A. L. Hagerty by deed dated the 17th day of July, 1903, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia, in Deed Book No. 37 at page 524; and the same tract or parcel a one-fourth interest undivided in which was conveyed by A. L. Hagerty to W. B. Stephenson, Emma Thomson, Jennie Stephenson, Mary S. Weimer and W. B. Stephenson, by deed dated the 16th day of March, 1908, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia, in Deed Book No. 49 at page 294.

The four above described tracts of land being the same tracts of land a one-twenty-fourth interest undivided in which were conveyed by W. B. Stephenson and Sarah W. Stephenson, his wife, to Emma S. Thomson, by deed dated January 12th, 1911, and of record in said County Clerk's office of said Nicholas County, in Deed Book No. 51 at page 563.

[fol. 66] Terms of Sale: The purchaser will be required to pay one-third of the purchase money cash in hand on the day of sale, and the remainder in two equal installments due in one and two years from day of sale, with interest from date evidenced by promissory notes and the title to said interest to be retained to secure the payment of said notes.

W. G. Brown, J. M. Wolverton, T. W. Ayres, Special Commissioners.

STATE OF WEST VIRGINIA,

County of Nicholas, To wit:

I, J. O. Dodrill, Clerk of the Circuit Court of said county, do certify that W. G. Brown, J. M. Wolverton and T. W. Ayres, Commis-

sioners appointed to make sale of the lands in the above mentioned cause have given bond and security as required by law before me in said cause.

Teste:

J. O. Dodrill, Clerk of the Circuit Court of Nicholas County.

[fol. 67] I, J. J. Dotson, Editor and Publisher of the Nicholas Republican, a weekly newspaper published at Richwood, in the County of Nicholas, and State of West Virginia, do certify that the hereto attached in the Chancery Cause of W. B. Cowther vs. W. B. Stephenson & et als. Commissioner's sale notice was published in said newspaper once in each week for 4 successive weeks commencing on the 7 day of April, 1921.

Given under my hand this 12 day of May, 1921.

Jas. J. Dotson, Editor and Publisher.

Fee for publication, \$42.20.

[fol. 68]

[Title omitted]

ORDER AFFIRMING APPROVAL OF BOND

The action of the Clerk in this day approving the bond executed by F. E. Cawley, principal, and National Surety Company, surety, in the penalty of Thirty Thousand Dollars (\$30,000.00) in the above styled cause, conditioned that the plaintiff, F. E. Cawley shall perform such future orders as may be made by the court in this suit in case the said defendants shall hereafter appear and make defense in said suit within the time prescribed by law, is hereby ratified and confirmed.

[fol. 69]

In Chancery

F. E. CAWLEY, Plaintiff,

vs.

W. B. STEPHENSON et als., Defendants

This cause came on this day to be further heard upon the former orders and decrees made therein; upon the former proceedings had therein; and the report of sale of Special Commissioners, W. G. Brown, J. M. Wolverton and T. W. Ayres, heretofore appointed to make sale of the real estate under the order of attachment issued herein and levied thereon, and which report is now filed in this cause, and there being no exceptions to said report and the court perceiving no just grounds of exceptions thereto, and no good cause being shown for setting the sale aside reported therein, it is therefore adjudged, ordered and decreed that said report of the sale therein mentioned be, and the same is hereby ratified and confirmed.

And it appearing from said report that H. L. Kirtley and H. W. Herold became the joint purchasers of said real estate sold by said Special Commissioners under said attachment; that said H. L. Kirtley and H. W. Herold have complied with the terms of the decree directing said sale by paying Twelve Thousand Nine Hundred Dollars (\$12,900.00) in cash, being one-third of the purchase money, and have executed their two notes each in the sum of Twelve Thousand Nine Hundred Dollars (\$12,900.00), payable in one and two years respectively, with interest, for the residue of the purchase money.

It is adjudged, ordered and decreed that out of the proceeds of said payment that said Special Commissioners do further pay the costs of this suit and the costs of said sale, including a commission of five per cent (5%) to said commissioners, as well also as the cost of suing out the attachment herein and all the proceedings therewith connected; and that the residue thereof, as well as the proceeds [fol. 70] of said notes be applied to the payment of plaintiff's debt as determined by a former order herein and that said Special Commissioners be, and they are hereby authorized to do whatever may be necessary to collect said notes, even to the bringing of suits for that purpose.

It is further adjudged, ordered and decreed that when said deferred installment of purchase money are fully paid that said W. G. Brown, J. M. Wolverton and T. W. Ayres, who are hereby appointed Special Commissioners for the purpose, with power in either to act, do make, execute, acknowledge and deliver for record an apt and sufficient deed, with covenants of special warranty, conveying the title to said real estate to said H. L. Kirtley and H. W. Herold, for which the said Special Commissioners shall be allowed the sum of Fifteen Dollars, to be taxed as a part of the costs of this suit.

And it is ordered that a writ of possession do issue for said real estate upon the motion of said H. L. Kirtley and H. W. Herold.

All of which is adjudged and decreed accordingly.

[fol. 71]

In Chancery

F. E. CAWLEY, Plaintiff,

vs.

W. B. STEPHENSON et al., Defendants

Whereas, J. M. Wolverton, W. G. Brown and T. W. Ayres were appointed Special Commissioners in the above styled case to make sale of certain real estate in the bill and proceedings mentioned, and

Whereas, said Special Commissioners did on the — day of —, make sale of said real estate, at which sale, H. L. Kirtley and H. W. Herold became the purchasers thereof for the sum of \$38,700.00, paying one-third cash and executing their two notes for the residue, each in the sum of \$12,900.00, payable in one and two years after date, respectively, and

Whereas, said notes have been *lots* or mislaid and cannot now be found and said purchasers decline to make payment of the amounts called for by said notes as and when due unless said notes are delivered up to them, properly cancelled and marked "Paid" or unless they are directed by proper order of said Court, and

Whereas, said Special Commissioners have satisfied the Court that said notes have been lost or mislaid and cannot now be found and it appearing to the Court that the first of said notes is now past due, upon motion of the Plaintiff, by Counsel, and of said Special Commissioners, and argument of Plaintiff's Counsel, it is hereby adjudged, ordered, and decreed that said Special Commissioners are hereby directed to give their joint receipt to said purchasers, describing the note or notes for which said money is received and the fact that said notes have been lost and cannot be found, for the sum called for in said notes when and as due, in lieu of said original notes and said purchasers are hereby directed to pay said notes and interest thereon when and as due to said Special Commissioners and to accept said receipt for the money so paid in lieu of said original notes.

[fol. 72] It is further adjudged, ordered and decreed that said notes as given by said purchasers are hereby cancelled, set aside and held for naught, when and so soon as said notes and each of them with the interest thereon in full is paid in conformity with the decree confirming the sale of this property, except and unless the said notes shall be found or otherwise come into the possession of said Special Commissioners, in which event, said notes shall be delivered to the purchasers when and as paid in lieu of the receipt directed to be given herein. And said Special Commissioners in the event that said notes or either of them shall hereafter be found, are hereby restrained from in any way negotiating them or disposing of them in any way except as required in this decree.

[Title omitted]

[fol. 73]

ORDER DISCHARGING BOND

It appearing to the court that the defendants in the above styled cause have failed to make an appearance herein within the time prescribed by law and make defense hereto, the bond required of the plaintiff by a former decree entered in this cause, with National Surety Company, as his surety, is hereby discharged and said surety company released from further liability thereon.

Chancery Order Book No. 10, page 232, May 19, 1923.

In Chancery

F. E. CAWLEY, Plaintiff,

VS.

W. B. STEPHENSON, Defendant

Whereas, at the May, 1923, term of this court, there came into the hands of H. C. Hill, General Receiver of said court, the sum of \$1,481.61, being the residue due the defendant in the above named cause, after the payment to the plaintiff by W. G. Brown, J. M. Wolverton and T. W. Ayres, Special Commissioners, of the amount adjudged to be due him, and of the costs of said suit.

And it appearing to the court that this matter is involved in a suit pending in the Federal District Court of the Southern District of West Virginia, at Charleston, which said court may call for said funds at any time; and it further appearing to the court that the said amount of \$1,481.61, now in the hands of the aforesaid General Receiver, should be deposited at interest that it may enhance in amount.

Therefore, it is adjudged, ordered and decreed that the said H. C. Hill, General Receiver, as aforesaid, shall deposit the said fund of \$1,481.61, on time deposit in the Nicholas County Bank of Summersville, West Virginia, at the usual rate of interest paid upon such deposits until the further order of this court.

Chancery Order Book No. 10, page 381, November term, 1923.

STATEMENT RE EXHIBITS

Exhibit No. 5 filed with plaintiff's bill in the Circuit Court of Nicholas County is the same as Exhibit No. 1 filed with plaintiff's bill in the United States District Court for the Southern District of West Virginia.

Exhibit No. 6 filed with plaintiff's bill in the Circuit Court of Nicholas County is the same as Exhibit No. 3 filed with plaintiff's bill in the United States District Court for the Southern District of West Virginia.

Exhibit No. 7 filed with plaintiff's bill in the Circuit Court of Nicholas County, West Virginia, is the same as Exhibit No. 2 filed with plaintiff's bill in the United States District Court for the Southern District of West Virginia.

Exhibit No. 8 filed with plaintiff's bill in the Circuit Court of Nicholas County, West Virginia, is the same as Exhibit No. 4 filed with plaintiffs' bill in the United States District Court for the Southern District of West Virginia.

Exhibit No. 9 filed with plaintiff's bill in the Circuit Court of Nicholas County, West Virginia, is the same as Exhibit No. 7 filed with plaintiffs' bill in the United States District Court for the Southern District of West Virginia.

Exhibit No. 10 filed with plaintiff's bill in the Circuit Court of Nicholas County, West Virginia, is the same as Exhibit No. 8 filed with plaintiffs' bill in the United States District Court for the Southern District of West Virginia.

[fol. 76] Among the Records and Proceedings enrolled in the Court of Common pleas in and for the County of Clearfield, in the Commonwealth of Pennsylvania, to No. 38 May Term, 1911, is contained the following:

DOCKET ENTRIES

F. E. CAWLEY

vs.

GEORGE H. LUM, W. B. STEPHENSON

Copy of Continuance

Atty., \$5.00; Sheriff, 12.50; Pro. Thompson, 8.00; Pro. Moore, 16.25.

Docket Entry

Summons in Assumpsit, damages not exceed \$10,000.00. Returnable first Monday of March, Plaintiff's statement filed. Served the within writ and Plaintiff's copy statement as follows: On Feb. 4, 1911, George H. Lum by personally handing him a true and attested copy of this writ, and at the same time and place handing him the Pl'ffs' copy statement, and on Feb. 8, 1911, served the written summons and Pl'ff'- statement on Def't W. B. Stephenson by handing a true and attested copy of the within summons, and Pl'ff's copy statement to an adult member of his family at his dwelling house. So ans. E. H. Woolridge, Sheriff. Feb. 18, 1911, Affd. of defense filed. July 7, 1911, Prothonotary enters plea of non-assumpsit.

By Rule of Court

Sept. 11, 1911.—On trial list and continued at cost of defendant. [fol. 77] Dec. 1, 1911.—Petition for continuance filed. Now, Dec. 1, 1911, within application for continuance made and duly considered, thereupon cause continued at the expense of Defendant for the term, cause not to be again continued for the same reasons herein alleged. By the Court.

Dec. 1, 1911.—On trial list and continued on application of W. B. Stephenson and at his cost not to be again continued for the same reason. By the Court.

Feb. 1, 1912.—On trial list and continued. By the Court.

May 6, 1912.—On trial list and continued.

Jan. 27, 1913.—Continued on application of Plaintiff.

Sept. 13, 1915.—By paper filed Judgment is directed to be entered in favor of the Plaintiff and against the Defendants for the sum of Five Thousand Dollars with interest from Aug. 7, 1908. By the Court.

Debt, \$5,000.00.

Interest from August 7, 1908.

Judgment: —.

[fol. 78]

Exhibit to Bill of Complaint

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

No. 38, May Term, 1911

F. E. CAWLEY

vs.

GEORGE H. LUM and W. B. STEPHENSON

PRÆCIPUE FOR SUMMONS

Issue Summons in Assumpsit, Damages not exceeding \$10,000.00.
Returnable first Monday of March Next.

Roland D. Swoppe, Atty. for Plaintiff.

To Roll Thompson, Esq., Prothonotary.

(Endorsed:) Filed Feb. 4, 1911. Roll B. Thompson, Prothonotary.

[fol. 79]

SUMMONS AND SHERIFF'S RETURN

CLEARFIELD COUNTY, ss:

The Commonwealth of Pennsylvania to the sheriff of said county,
Greeting:

We command you, That you summon Geo. H. Lum and W. B. Stephenson, so that they be and appear before our Court of Common Pleas, to be holden at Clearfield, in and for said county, on the first Monday of March next, then to answer F. E. Cawley of a plea in Damages, \$10,000.00. And have you then and there this writ.

Witness the Hon. Singleton Bell, President of our said Court, at Clearfield, Pa., the 4th day of Feb., an-o Domini one thousand nine hundred and 11.

Roll Thompson, Prothonotary.

Return of Service

Served the within writ and plaintiff's copy statements as follows:
On Feb. 4, 1911, served the within summons on Defendant George H. Lum, by personally handing him a true and attested copy of this

writ and at the same time and place, handing him the plaintiff's copy statement, and on Feb. 8, 1911 served the within summons and plaintiff's statement on defendant W. B. Stephenson by handing a true and attested copy of the within summons, and plaintiff's copy statement, to an adult member of his family, at his dwelling house.

So answer-

E. H. Woolridge, Sheriff.

[fol. 80]

[Title omitted]

STATEMENT OF FACTS

The plaintiff, F. E. Cawley, claims of the defendants, Geo. H. Lum and W. B. Stephenson, the sum of Five Thousand (5,000.00) Dollars, with interest thereon from August 7th, 1908, at the rate of six per cent per annum, payable semi-annually, upon the cause of action whereof the following is a statement.

The defendants, George H. Lum and W. B. Stephenson, on the 7th day of February, 1908, at Little Falls, Minn., made their promissory note, whereof the following is a true and correct copy:

\$5,000.00.

Little Falls, Minn., Feb. 7th, 1908.

Aug. 7th, 1909, after date, we promise to pay the order of F. E. Cawley Five Thousand 00/100 Dollars at Little Falls, Minn., value received, with interest after date at the rate of 6 per cent per annum, payable semi-annually.

Geo. H. Lum. W. B. Stephenson.

No. —. Due — —, —.

(Endorsed on the back:) Interest hereon (\$150.00) paid to Aug. 7th, 1908.

And having delivered the said promissory note to the plaintiff, the defendants became liable for the payment of the same according to the tenor and effect thereof.

Plaintiff received as collateral security for said note, a certificate for fifty (50) shares of the Capital Stock of the North Western Mill- [fol. 81] ing Company of the par value of \$100.00 per Share.

Plaintiff has received nothing whatever on said collateral and the same is still in possession of the plaintiff, and upon payment of the amount of said note, interest and costs of this action, plaintiff will deliver the said certificate of Stock to the said defendants.

Defendants have neglected and refused to pay the said note or pay part thereof, except the sum of one hundred and fifty (150) dollars, interest as credited thereon.

Wherefore the plaintiff brings this suit to recover from the defendants the sum of five thousand (\$5,000.00) dollars, the face of said note together with interest thereon from August 7th, 1908, at the rate of six per cent per annum, payable semi-annually and costs.

Roland D. Swoop, Attorney for Plaintiff.

STATE OF MASSACHUSETTS,
County of Suffolk, ss:

F. E. Cawley, the plaintiff in the foregoing statement being duly sworn according to law doth depose and say that the facts set forth in the foregoing statement are true and correct as therein stated.

F. E. Cawley.

Sworn and subscribed before me this 31st day of January, A. D. 1911. Wm. Lippman, Notary Public. Commission expires October 20, 1916.

(Endorsed:) Filed Feb. 4, 1911. Roll B. Thompson, Prothonotary.

[fol. 82]

[Title omitted]

AFFIDAVIT OF ROLL B. THOMPSON

CLEARFIELD COUNTY, ss:

Personally appeared before me, Roll B. Thompson, Prothonotary, W. B. Stephenson, one of the above named defendants, who being duly sworn according to law says that he has a full and just defense to the whole of plaintiff's claim, the nature and character of which is as follows:

First. That there was no consideration given for the note of \$5,000 on which the plaintiff now asks to recover from the said W. B. Stephenson \$5,000 with interest from August 7th, 1908.

Second. That when this note was given the plaintiff held and owned the certificate for 50 shares of stock of the North-Western Milling Company of the par value of \$100 per share, referred to in plaintiff's statement and which he now alleges to hold as collateral security for the payment of said note and the plaintiff then and there attempted to make a technical transfer of said stock certificate as consideration for this note but the plaintiff in fact still held and now holds this stock certificate and W. B. Stephenson was never the owner of this stock certificate or had possession of it.

Third. This certificate of stock had no value at the time the note was given or at any time since. The Northwestern Milling Company was then insolvent and was within a few months thereafter adjudged bankrupt and this certificate of stock was worthless and is worthless today, all of which was then and is now known to plaintiff.

[fol. 83] Fourth. At the time this note was given George H. Lum, one of the defendants, was President of the Northwestern Milling Company and had entire control of the mill, plant, equipment, books, accounts and papers of this Company and so manipulated the books and accounts and papers of this company as to conceal from and deceive the said W. B. Stephenson as to the actual condition of the company as to its insolvency and the worthless value of its stock.

Fifth. That at the time this note was given and during most of the period since there has been a close allied business relation between George H. Lum and the Plaintiff so that the plaintiff was furnished with information and had knowledge as to the actual condition of this Company both as to its insolvency and the worthless value of this stock, and knowing the worthless value of this stock, he, the plaintiff, and George H. Lum entered into a scheme to cheat and defraud W. B. Stephenson whereby they tricked him into giving his note of \$5,000 as well as other notes and attempted to transfer to him as consideration therefor this worthless stock.

Sixth. That the plaintiff subsequent to the giving of this note was a creditor of the Northwestern Milling Company and George H. Lum was a debtor and some time in the year 1909 the said F. E. Cawley along with other creditors of the Northwestern Milling Company accepted from George H. Lum certain property owned by George H. Lum as consideration for releasing him from further liability.

Seventh. That the plaintiff accepted this property of George H. Lum and released him without making any effort or attempt to collect from him any amount on this \$5,000 note or the other notes which he now holds.

All of which defendant believes and expects to be able to prove on the trial of the case.

W. B. Stephenson.

Sworn and subscribed to this eighteenth day of February A. D. 1911. Roll B. Thompson, Pro.

[fol. 84] (Endorsed:) Filed Sept. 13, 1915. John H. Moore, Prothonotary.

[fol. 85] PETITION OF W. B. STEPHENSON

[Title omitted]

To the Honorable Allison O. Smith, President Judge of said court:

The petition of W. B. Stephenson, one of the above named defendants respectfully represents:

1. That the above stated case is on the list for trial for the week beginning December 4, 1911.

2. That the said defendant is not prepared to go to trial and is wholly unable to present a full and adequate defense in this case at this time for the following reasons:

(a) The defense upon which defendant relies consists largely of facts contained in books and papers belonging to the Northwestern Milling Company of Little Falls, Minn., which books and papers will require a careful and thorough examination in advance of the

trial and said books and papers must be presented at the trial of this case, and these books and papers are now in the custody of the Northwestern Milling Company of Little Falls, Minn.

(b) The particular person who had charge and custody of these books has either since died or is in parts unknown and it will be necessary to either produce such person or to make proof of his handwriting.

(c) The further testimony upon which the defendant relies is contained in the bankruptcy proceeding against George H. Lum Bankrupt in the United States District Court for the State of Minnesota and an examination of the proceeding will be necessary in advance of the trial and an exemplified copy of that proceeding necessary at the trial.

(d) The further testimony upon which defendant relies in his defense is contained in the bankruptcy proceeding against the North-[fol. 86] western Milling Company bankrupt in the United States District Court for the State of Minnesota and an examination in detail will be necessary in advance of the trial and an exemplified copy of said proceedings will be necessary at the trial.

All of these facts are material and necessary to the defense of this case and because of the amount that is here involved and of the multiplicity of facts and of the time and expense required in the preparation of a case of this character defendants has been unable to gather together and prepare his defense for the trial of the case at this term; and for the further reason that the witnesses who are necessary to a defense of this case are without the jurisdiction of the Court and have refused to attend the trial at this term. The witnesses upon whom the defendant relies are John W. Stephenson, H. C. Meining of Little Falls, Minn., and — Hanks, address unknown; and for the further reason that it is impracticable and out of reason for the defendant to take depositions in advance of the trial of this case without an examination of these books and papers and records in advance of such depositions.

He, therefore, prays that the honorable Court for the reasons herein stated will grant a continuance of this case from this term of Court until the next February Term of Court at which time he expects to be able to present a full and complete defense to this case.

W. B. Stephenson.

STATE OF PENNSYLVANIA,

County of Clearfield, ss:

Personally appeared before me W. B. Stephenson who being duly affirmed according to law says that the facts set forth in the foregoing petition are true and correct in so far as he knows and in so far as he has been advised by counsel.

Witness my hand and official seal this 29 day of November A. D. 1911.

[fol. 87]

Roll B. Thompson, Prothonotary.

(Endorsed:) Filed Dec. 1, 1911. Roll B. Thompson, Prothonotary.

[fol. 88]

AFFIDAVIT OF W. B. STEPHENSON

[Title omitted]

STATE OF PENNSYLVANIA,
County of Clearfield, ss:

Personally appeared before me W. B. Stephenson, who being duly sworn according to law says that he is one of the defendants in the above stated case and that John W. Stephenson, a material witness, who has personal charge and custody of books and papers that are material to the defense of this case, is in the State of Minnesota and that the books and papers necessary to the defense are in the State of Minnesota; that the said John W. Stephenson being without the jurisdiction of the court and not subject to a subpoena cannot be brought before this court; and that the said John W. Stephenson is unable to attend the trial of this case at this September Court because any absence from his business at this time would mean serious loss to him, in his business.

W. B. Stephenson.

Sworn and subscribed to before me this 13th day of September
A. D. 1911. Andrew McQuown, N. P. My commission
expires Feb. 21st, 1915.

COPY OF JUDGMENT DOCKET ENTRY

[fol. 89]

Defendants	Plaintiffs	Docket	No.	Term	Year	Date of lien
Lum, Geo. H. et al.	F. E. Cawley.....	89	38	May	1911	Sept. 13, 1915
Stephenson, W. B. et al.	F. E. Cawley.....	89	38	May	1911	Sept. 13, 1915
Defendants	Plaintiffs	Nature of lien		Amount	Commenc't of int.	
Lum, Geo. H. et al.	F. E. Cawley.....	Judgment		\$5,000.00	Aug. 7, 1915	
Stephenson, W. B. et al.	F. E. Cawley.....	Judgment		\$5,000.00	Aug. 7, 1915	

[fol. 90]

CLERK'S CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA,
County of Clearfield, ss:

I, Geo. W. Ralston, Prothonotary of the Court of Common Pleas in and for said County do, hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein F. E. Cawley, — Plaintiff and George H. Lum and W. B. Stephenson — Defendant-, so full and entire as the same remains of record before the said Court, at No. —, May Term, A. D. 1911.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this 26 day of January, 1920.

Geo. W. Ralston, Prothonotary.

JUDGE'S CERTIFICATE TO CLERK

I, Singleton Bell, President Judge of the Fourth-sixth Judicial District, composed of the Courts of Oyer and Terminer, Quarter Sessions and General Jail Delivery, Orphans' Court and Court of Common Pleas do certify that — —, by whom the annexed record, certificate and attestations were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary in and for said county of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given as well in Courts of Judicature as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

Singleton Bell, President Judge.

CLERK'S CERTIFICATE TO JUDGE

COMMONWEALTH OF PENNSYLVANIA,
County of Clearfield, ss:

I, Geo. W. Ralston, Prothonotary of the Court of Common Pleas in and for said county, do certify that the Honorable Singleton Bell, [fol. 91] by whom the foregoing attestation was made and who thereunto subscribed his name, was at the time of making thereof and still is President Judge of the Court of Oyer and Terminer, Quarter Sessions and General Jail Delivery, Orphans' Court and Court of Common Pleas, in and for said County, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 26 day of January, A. D. 1920.

Geo. W. Ralston, Prothonotary.

[fol. 92] Among the records and Proceedings enrolled in the Court of Common Pleas in and for the County of Clearfield, in the Commonwealth of Pennsylvania, to No. 29 May, Term, 1914, is contained the following:

EXHIBIT TO BILL OF COMPLAINT

C. J. CAWLEY

vs.

GEORGE H. LUM, W. B. STEPHENSON

Copy of Continuance

Atty., \$5.00; Pro. Moore, 15.25.

Docket Entry-

Summons in Assumpsit, damages not exceeding \$10,000, Returnable first Monday of March next. The Plaintiff's statement filed. Now, February 4, 1914, we hereby accept service of the within summons and waive service thereof by the sheriff and also accept service of copy of Plaintiff's statement. Geo. H. Lum. Murray & O'Laughlin, Attys. for W. B. Stephenson.

February 25, 1914.—Affidavit of defense filed.

March 30, 1914.—Prothonotary enters plea of non-assumpsit as per rule of court.

May 4, 1914.—Continued by consent.

February 2, 1915.—Continued.

May 11th, 1915.—On trial list and continued.

September 13, 1915.—By paper filed, judgment is directed to be entered in favor of the Plaintiff and against the Defendants for the sum of forty-five hundred dollars with interest from August 7, 1908. By the Court.

Debt, \$4,500.00.

[fol. 93] Interest from August 7, 1908.

Judgment: —.

January 19, 1920.—By papers filed the above judgment is assigned, transferred and set over to F. E. Cawley Debt, interest without recourse.

Attest:

Geo. W. Ralston, Prothonotary.

SUMMONS

COMMONWEALTH OF PENNSYLVANIA,
County of Clearfield:

The Commonwealth of Pennsylvania to the sheriff of said county,
Greeting:

We command you that you summon Geo. H. Lum and W. B. Stephenson so that they be and appear before our Court of Common Pleas, to be holden at Clearfield, in and for said county, on the first Monday of March next, then to answer C. J. Cawley of a plea in assumpsit, Damages, not exceeding \$10,000.00, and have you then and there this writ.

Witness the Hon. Singleton Bell, President of our said Court, at Clearfield, Pa., the 4th day of February, Anno Domini one thousand nine hundred and 14.

John H. Moore, Prothonotary.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA.

No. 29, May Term, 1914

C. J. CAWLEY

vs.

GEO. H. LUM and W. B. STEPHENSON

[fol. 94] Issue Summons in Assumpsit, Damages not exceeding \$10,000.00. Returnable first Monday of March next.

—, Attorney for Plaintiff.

To John H. Moore, Esq., Prothonotary.

Return on Service of Summons

Now, February 4, 1914, we hereby accept service of the within summons and waive service thereof by the Sheriff and also accept service of copy of Plaintiff's statement.

Geo. H. Lum, Murray O'Laughlin, Attys. for W. B. Stephenson.

[fol. 95]

STATEMENT OF FACTS

[Title omitted]

The Plaintiff, C. J. Cawley, claims of the Defendants, Geo. H. Lum and W. B. Stephenson, the sum of five thousand (\$5,000.00) dollars, with interest thereon from August 7th, 1908, at the rate of six per cent per annum, payable semi-annually, less credit of five

hundred (\$500.00) dollars, paid on principal September 4, 1908, upon the cause of action whereof the following is a statement.

The defendants, Geo. H. Lum and W. B. Stephenson, on the 7th day of February, 1908, at Little Falls, Minn., made their promissory note, whereof the following is a true and correct copy:

\$5,000.00.

Little Falls, Minn., Feb. 7, 1908.

Aug. 7th, 1908, after date, we promise to pay to the order of F. E. Cawley five thousand dollars at Little Falls, Minn., value received, with interest after date at the rate of 6 per cent per annum, payable semi-annually.

No. —. Due — — —.

Geo. H. Lum. W. B. Stephenson.

(Endorsed on back:) Interest hereon, \$150.00, paid to Aug. 7th, 1908. Sept. 4th, 1908, paid on principal \$500.00. Pay C. J. Cawley [fol. 96] or order. F. E. Cawley.

That the said written instrument was a negotiable instrument and was delivered by the Defendants to F. E. Cawley for the purpose of giving effect to the said instrument and was negotiated by said F. E. Cawley by endorsement and delivery to the Plaintiff herein named, Plaintiff received with said Note as collateral security therefore a certificate for fifty Shares of the Capital Stock of the Northwestern Milling Company of the par value of one hundred (\$100.00) dollars per share. Neither the Payee of said Note, F. E. Cawley or the Plaintiff have received anything whatever on account of said collateral and the same is still in possession of the Plaintiff and upon payment of the balance of said Note, with interest and costs of this suit, Plaintiff will deliver the said Certificate of Stock to the said Defendants. Defendants upon demand, being made for payment of this Note according to the tenor and effect thereof, have neglected to pay the same or any part thereof, except the payments as credited thereon.

Wherefore, the plaintiff brings this suit to recover from the Defendants the sum of five thousand (\$5,000.00) dollars, together with interest thereon from August 7th, 1908, at the rate of six per cent per annum, payable semi-annually, and costs, less credits as endorsed on said Note.

— — —, Attorney for Plaintiff.

STATE OF MINNESOTA,

County of Pipestone, ss:

C. J. Cawley, the plaintiff in the foregoing action being duly sworn, according to law, doth depose and say that the facts set forth in the foregoing statement are true and correct.

C. J. Cawley.

Sworn and subscribed before me this 2nd day of Feb., A. D. [fol. 97] 1914. W. T. Morgan, Notary Public, Pipestone County. My commission expires Jan. 16, 1916.

(Endorsed:) Filed Feb. 5, 1914. John H. Moore, Prothonotary.

[fol. 98]

AFFIDAVIT OF W. B. STEPHENSON

[Title omitted]

Personally appeared before me, John H. Moore, Prothonotary, W. B. Stephenson, one of the above named defendants, who being duly sworn according to law says that he has a full and just defense to the whole of Plaintiff's claim, the nature and character of which is as follows:

First. That plaintiff is not the owner or holder for value or consideration of the note of \$5,000.00 on which this action is brought but is the mere custodian for the purpose of this action.

Second. That there was never an assignment or transfer of said note but a mere delivery without value and that delivery was made long after the maturity of said note and after the note had lost its negotiability.

Third. That F. E. Cawley, the Payee, actual holder and owner of said note gave no value or consideration for said note.

Fourth. That at the time this note was given the said F. E. Cawley held and owned large shares of stock of the Northwestern Milling Company at Little Falls, Minnesota, of which he purported or attempted to assign to said W. B. Stephenson but of which he is still the owner and holder.

Fifth. That at the time this note was given said shares of stock of the Northwestern Milling Company were worthless and of no value and the Northwestern Milling Company was insolvent and within a few months thereafter was adjudged bankrupt.

Sixth. That at the time this note was given the said F. E. Cawley well knew of the worthless value of said stock and of the insolvency of [fol. 99] the said Northwestern Milling Company.

Seventh. That at the time this note was given George H. Lum, one of the defendants, was President of the Northwestern Milling Company and had entire control of its management and operation.

Eighth. That at the time this note was given and during most of the period since there has been a close allied business relation between George H. Lum and F. E. Cawley.

Ninth. That at the time this note was given both George H. Lum and F. E. Cawley well knew of the insolvent and bankrupt condition of the Northwestern Milling Company.

Tenth. That W. B. Stephenson never knew of the insolvency of the Northwestern Milling Company until after this note was given and at or about the time the Northwestern Milling Company was adjudged bankrupt.

Eleventh. That F. E. Cawley and George H. Lum together entered into a scheme to cheat and defraud W. B. Stephenson by the method herein set out.

Twelfth. That F. E. Cawley and George H. Lum subsequent to the giving of this note agreed with each other to release and discharge George H. Lum from liability on this note and F. E. Cawley has accepted and received certain property from George H. Lum in consideration thereof.

All of which defendant, W. B. Stephenson, believes and expects to be able to prove on the trial of this case.

W. B. Stephenson.

Sworn and subscribed to this 25th day of February, A. D. 1914. John H. Moore, Pro.

(Endorsed:) Filed Feb. 25, 1914. John H. Moore, Prothonotary.

[fol. 100]

[Title omitted]

STIPULATION AND ENTRY OF JUDGMENT

We, the subscribers hereto, the defendants above named, agree to a settlement of the said case that there be judgment entered against us for the sum of Forty-Five Hundred Dollars with interest thereon from August 7th, 1908, and the record costs.

George H. Lum. (Seal.) W. B. Stephenson. (Seal.)

Witness: Roland Swoope, J. P. O'Laughlin.

Now this 13th day of September A. D. 1915 in accordance with the said direction of the said defendants judgment is hereby entered against the said defendants for the said amount and for the said costs with interest thereon.

By the Court.

Singleton Bell, P. J.

Now this 10th day of May, A. D. 1915, we, the said plaintiffs and the said defendants are agreed that upon the payment by the said defendants, or either of them, of the said judgment, debt, interest and costs, the plaintiff shall deliver to the defendant so paying said sum, the collateral security which is now held by the plaintiff, to wit: Fifty shares of the capital stock of the Northwestern Milling Company, a Minnesota Corporation.

Roland Swoope, Atty. for Plf. (Seal.) J. P. O'Laughlin, Atty. for Def. (Seal.)

Witness: — — —

Clearfield, Penna., May 10, 1915.

[fol. 101] (Endorsed:) Filed Sept. 13, 1915. John H. Moore, Prothonotary.

[fol. 102] ASSIGNMENT C. J. CAWLEY TO F. E. CAWLEY

No. 29, May Term, 1914

[Title omitted]

Debt	\$4,500.00
Int. from Aug. 7th, 1908.....	
Attorney and Tax	5.00
Pro. Moore	15.25

Entered 13th of Sept. 1915.

Now, November —, 1919, for value received, I hereby assign, transfer and set over to F. E. Cawley the above stated judgment, debt, interest and costs.

C. J. Cawley.

Witness-: Horace B. Lewis, J. E. Hopper.

[fol. 103] To Assigned to Judgment

Assignee, F. E. Cawley; assignor, C. J. Cawley; defendant, Geo. H. Lum; No, date, and year, 29 May T., 1914; amount, \$4,500.00; date Jan. 19, 1920.

[fol. 104] COPY OF JUDGMENT DOCKET ENTRY

Defendants	Plaintiffs	Docket	No.	Term	Year	Date of lien
Lum, Geo. H. et al.	C. J. Cawley	94	29	May	1914	Sept. 13, 1915
Stephenson, W. B. et al.	C. J. Cawley	94	29	May	1914	Sept. 13, 1915
Defendants	Plaintiffs	Nature of lien		Amount	Commenc't of int.	
Lum, Geo. H. et al.	C. J. Cawley	Judgment		\$4,500.00	Aug. 7th, 1915	
Stephenson, W. B. et al.	C. J. Cawley	Judgment		\$4,500.00	Aug. 7th, 1915	

[fol. 105]

CLERK'S CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA,
County of Clearfield, ss:

I, Geo. W. Ralston, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein C. J. Cawley — plaintiff and Geo. H. Lum and W. B. Stephenson — defendant, so full and entire as the same remains of record before the said Court, at No. —, May Term, A. D. 1914.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 26 day of January, 1920.

Geo. W. Ralston, Prothonotary.

JUDGE'S CERTIFICATE TO CLERK

I, Singleton Bell, President Judge of the Forth-sixth Judicial District, composed of the Courts of Oyer and Terminer, Quarter Sessions and General Jail Delivery, Orphan's Court and Court of Common Pleas, do certify that Geo. W. Ralston by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said County, was at the time of so doing and now is Prothonotary in and for said county of Clearfield, Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are an- ought to be given, as well in Courts of Judicature as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

Singleton Bell, President Judge.

[fol. 106]

CLERK'S CERTIFICATE TO JUDGE

COMMONWEALTH OF PENNSYLVANIA,
County of Clearfield, ss:

I, Geo. W. Ralston, Prothonotary of the Court of Common Pleas in and for said County, do certify that the Honorable Singleton Bell, by whom the foregoing attestation was made and who has thereunto subscribed his name, was at the time of making thereof and still is President Judge of the Court of Oyer, and Terminer, Quarter Sessions and General Jail Delivery, Orphans' Court and Court of Common Pleas, in and for said County, duly commissioned and qualified; to all whose acts, as such, full faith and credit are an- ought to be given, as well in Courts of Judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 26 day of January, A. D., 1920.

Geo. W. Ralston, Prothonotary.

[fol. 107] Among the records and proceedings enrolled in the Court of Common Pleas in and for the County of Clearfield, in the Commonwealth of Pennsylvania, to No. 31 May Term, 1914, is contained the following:

EXHIBIT TO BILL OF COMPLAINT

SARAH H. CAWLEY

vs.

GEORGE H. LUM and W. B. STEPHENSON

Docket Entry-

Atty., \$5.00; Pro. Moore, 15.25.

Summons in Assumpsit, damages not exceeding \$10.00. Returnable first Monday of March next. Plaintiffs' Statement filed.

Now, February 4, 1914, we hereby accept service of the within summons and waive service thereof by the sheriff and also accept service of copy of Plaintiffs' Statement. Geo. H. Lum, Murray & O'Laughlin, Attys. for W. B. Stephenson.

February 25, 1914.—Aff. of defense filed.

March 30, 1914.—Prothonotary enters plea of non-assumpsit as per rules of court.

May 4, 1914.—Continued by consent February 2, 1915. Continued May 11, 1915. On Trial list and continued.

Sept. 13, 1915.—By paper filed judgment is entered in favor of the Plaintiff and against the Defendants for the sum of Five Thousand Dollars with interest from August 7, 1908. By the Court.

Debt, \$5,000.00.

Interest from August 7, 1908.

Judgment: —.

Jan. 19th, 1920.—By paper filed the above judgment is assigned, transferred and set over to F. E. Cawley, debt, interest and cost without recourse.

Attest:

Geo. W. Ralston, Prothonotary.

In Court of Common Pleas of Clearfield County, Penna.

No. 31, May Term, 1914

SARAH H. CAWLEY

vs.

GEO. H. LUM and W. B. STEPHENSON

[fol. 108]

PRÆCIPE FOR SUMMONS

Issue summons in Assumpsit. Damages not exceeding \$10,000.00. Returnable first Monday of March next.

Roland D. Swoope, Attorney for Plaintiff.

To John H. Moore, Esq., Prothonotary.

(Endorsed:) Filed Feb. 4, 1914. John H. Moore, Prothonotary.

SUMMONS

CLEARFIELD COUNTY, ss:

The Commonwealth of Pennsylvania to the sheriff of said county, Greeting:

We command you that you summon Geo. H. Lum and W. B. Stephenson so that they be and appear before our Court of Common Pleas, to be holden at Clearfield, in and for said county, on the first Monday of March, next, then to answer Sarah H. Cawley of a plea in Assumpsit Damages, not exceeding \$10,000.00. And have you then and there this writ.

Witness the Hon. Singleton Bell, President of our said Court, at Clearfield, Pa., the 4th day of February, Anno Domini one thousand nine hundred and 14.

John H. Moore, Prothonotary.

[fol. 109]

STATEMENT OF FACTS

[Title omitted]

The Plaintiff, Sarah H. Cawley, claims of the Defendants, Geo. H. Lum and W. B. Stephenson, the sum of five thousand (\$5,000.00) dollars, with interest thereon from August 7th, 1908, at the rate of six per cent per annum, payable semiannually, upon the cause of action, whereof the following is a statement.

The Defendants, Geo. H. Lum and W. B. Stephenson, on the 7th day of February, 1908, at Little Falls, Minn., made their promissory note, whereof the following is a true and correct copy:

\$5,000.00.

Little Falls, Minn., Feb. 7th, 1908.

Three years after date we promise to pay to the order of F. E. Cawley five thousand dollars at Little Falls, Minn., value received, with interest after date *that* the rate of 6 per cent per annum, payable semiannually.

No. —. Due — —, —.

Geo. H. Lum, W. B. Stephenson.

(Endorsed on back:) Interest hereon paid to Feb. 28th, '08. Interest hereon (\$132.57) paid, being interest to Aug. 7th, 1908. Pay Sarah H. Cawley or order. F. E. Cawley.

That the said written instrument was a negotiable instrument and was delivered by the Defendants to F. E. Cawley for the purpose of giving effect to the said instrument and was negotiated by said F. E. Cawley by endorsement and delivery to the Plaintiff herein named, Plaintiff received with said Note as collateral security therefore a certificate for fifty Shares of the Capital Stock of the North Western Milling Company of the par value of one hundred (\$100.00) dollars per share. Neither the Payee of said Note, F. E. Cawley or the Plaintiff have received anything whatever on account of said collateral and [fol. 110] the same is still in possession of the plaintiff and upon payment of the amount of said Note, with interest and costs of this suit, Plaintiff will deliver the said Certificate of Stock to the said Defendants. Defendants upon demand, being made for payment of this Note according to the tenor and effect thereof, have neglected to pay the same or any part thereof, except the interest as credited thereon.

Wherefore the Plaintiff brings this suit to recover from the Defendants the sum of five thousand (\$5,000.00) dollars, together with interest thereon from August 7th, 1908, at the rate of six per cent per annum, payable semi-annually, and costs.

Roland Swoope, Attorney for Plaintiff.

STATE OF MASSACHUSETTS,

County of Middlesex, ss:

Sarah H. Cawley, the Plaintiff in the foregoing action being duly sworn, according to law, doth depose and say that the facts as set forth in the foregoing statement are true and correct.

Sarah H. Cawley.

Sworn and subscribed before me this 29th day of January, A. D. 1914. George H. Carrick, Notary Public. My commission expires Dec. 21, 1917.

(Endorsed:) Filed Feb. 4, 1914. John H. Moore, Prothonotary.

[fol. 111]

[Title omitted]

AFFIDAVIT OF W. B. STEPHENSON

CLEARFIELD COUNTY, ss:

Personally appeared before me, John H. Moore, Prothonotary, W. B. Stephenson, one of the above named defendants, who being duly sworn according to law says that he has a full and just defense to the whole of Plaintiff's claim, the nature and character of which is as follows:

First. That plaintiff is not the owner or holder for value or consideration of the note of \$5,000.00 on which this action is brought but is the mere custodian for the purposes of this action.

Second. That there was never an assignment or transfer of said note but a mere delivery without value and that delivery was made long after the maturity of said note and after the note had lost its negotiability.

Third. That F. E. Cawley, the Payee, actual holder and owner of said note gave no value or consideration for said note.

Fourth. That at the time this note was given the said F. E. Cawley held and owned large shares of stock of the Northwestern Milling Company at Little Falls, Minnesota, of which he purported or attempted to assign to said W. B. Stephenson but of which he is still owner and holder.

Fifth. That at the time this note was given said shares of stock of the Northwestern Milling Company were worthless and of no value and the Northwestern Milling Company was insolvent and within a few months thereafter was adjudged bankrupt.

Sixth. That at the time this note was given the said F. W. Cawley well knew of the worthless value of said stock and of the insol-
[fol. 112] vency of the said Northwestern Milling Company.

Seventh. That at the time this note was given George H. Lum, one of the defendants, was President of the Northwestern Milling Company and had entire control of its management and operation.

Eighth. That at the time this note was given and during Most of the period since there has been a close allied business relation between George H. Lum and F. E. Cawley.

Ninth. That at the time this note was given both George H. Lum and F. E. Cawley well knew of the insolvent and bankrupt condition of the Northwestern Milling Company.

Tenth. That W. B. Stephenson never knew of the insolvency of the Northwestern Milling Company until after this note was given and at or about the time the Northwestern Milling Company was adjudged bankrupt.

Eleventh. That F. E. Cawley and George H. Lum together entered into a scheme to cheat and defraud W. B. Stephenson by the method herein set out.

Twelfth. That F. E. Cawley and George H. Lum subsequent to the giving of this note agreed with each other to release and discharge George H. Lum from liability on this note and F. E. Cawley has accepted and received certain property from George H. Lum in consideration thereof.

All of which defendant, W. B. Stephenson, believes and expects to be able to prove on the trial of this case.

W. B. Stephenson.

Sworn and subscribed to this 25th day of February, A. D. 1914. John H. Moore, Pro.

(Endorsed:) Filed Feb. 25, 1914. John H. Moore, Prothonotary.

[fol. 113]

[Title omitted]

STIPULATION AND ENTRY OF JUDGMENT

We the subscribers hereto, the defendants above named, agree as a settlement of the said case that there be judgment entered against us for the sum of Five Thousand Dollars with interest thereon from August 7th, 1908, and the record costs.

Geo. H. Lum. (Seal.) W. B. Stephenson. (Seal.)

Witness:- Roland D. Swoope, J. P. O'Laughlin.

Now this 13th day of September A. D. 1915 in accordance with the said direction of the said defendants judgment is hereby entered against the said defendants for the said amount and for the said costs with interest thereon.

By the Court.

Singleton Bell, P. J.

Now this 10th day of May A. D. 1915 we the said plaintiff and the said defendants are agreed that upon the payment by the said defendants, or either of them, of the said judgment, debt, interest and costs, the plaintiff shall deliver to the defendants so paying said sum the colateral security which is now held by the plaintiff to wit: Fifty shares of the capital stock of the Northwestern Milling Company, a Minnesota corporation.

Roland Swoope. (Seal.) J. P. O'Laughlin. (Seal.)

Clearfield, Penna., May 10th, 1915.

[fol. 114]

No. 31, May Term, 1914

[Title omitted]

Debt	\$5,000.00
Int. from Aug. 7th, 1908.....
Atty. and Tax.....	5.00
Pro. Moore	15.25

Entered 13th of September, 1915.

ASSIGNMENT, SARAH H. CAWLEY TO F. E. CAWLEY

Now, November 29th, 1919, for value received, I hereby assign, transfer and set over to F. E. Cawley the above stated judgment, debt, interest and costs.

Sarah H. Cawley.

Witness: Lila Lo Cascio.

[fol. 115]

Index to Assigned to Judgment

Assignee, Cawley, F. E.; assignor, Sarah H. Cawley; defendant, Geo. H. Lum et al.; No., term, and year, 31, May, 1914; amount, \$5,000.00; date, Jan. 19, 1920.

COPY OF JUDGMENT DOCKET ENTRY

[fol. 116]

Defendants	Plaintiffs	Docket	No.	Term	Year	Date of lien
Lum, Geo. H. et al.	Sarah H. Cawley. . .	94	31	May	1914	Sept. 13, 1915
Stephenson, W. B. et al.	Sarah H. Cawley. . .	94	31	May	1914	Sept. 13, 1915
Defendants	Plaintiffs	Nature of lien		Amount		Commenc't of lin.
Lum, Geo. H. et al.	Sarah H. Cawley. . .	Judgment		\$5,000.00		Aug. 7, 1908
Stephenson, W. B. et al.	Sarah H. Cawley. . .	Judgment		\$5,000.00		Aug. 7, 1908

[fol. 117]

CLERK'S CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA,
County of Clearfield, ss:

I, Geo. W. Ralston, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein Sarah H. Cawley — plaintiff, and Geo. H. Lum and W. B. Stephenson — Defendant, so full and entire as the same remains of record before the said Court, at No. —, May Term, A. D. 1914.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 26 day of January, 1920.

Geo. W. Ralston, Prothonotary.

JUDGE'S CERTIFICATE TO CLERK

I, Singleton Bell, President Judge of the Forty-sixth Judicial District, composed of the Courts of Oyer and Terminer, Quarter Sessions and General Jail Delivery, Orphan's Court and Court of Common Pleas, do certify that Geo. W. Ralston by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said County, was at the time of so doing and now is Prothonotary in and for said county of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

Singleton Bell, President Judge.

[fol. 118]

CLERK'S CERTIFICATE TO JUDGE

COMMONWEALTH OF PENNSYLVANIA,
County of Clearfield, ss:

I, Geo. W. Ralston, Prothonotary of the Court of Common Pleas in and for said county, do certify that the Honorable Singleton Bell, by whom the foregoing attestation was made and who has thereunto subscribed his name, was at the time of making thereof and still is President Judge of the Court of Oyer, and Terminer, Quarter Sessions and General Jail Delivery, Orphans' Court and Court of Common Pleas, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 26 day of January, A. D., 1920.

Geo. W. Ralston, Prothonotary.

[fol. 119] Among the records and proceeding enrolled in the Court of Common Pleas in and for the County of Clearfield, in the Commonwealth of Pennsylvania, to No. 30, May Term, 1914, is contained the following:

Exhibit to Bill of Complaint

Copy of Continuance

DOCKET ENTRY

FRANK STANTON CAWLEY

vs.

GEORGE H. LUM and W. B. STEPHENSON

Atty., \$5.00; Pro. Moore, 15.25.

Summons in assumpsit, damages not exceeding \$10,000. Returnable first Monday of March next.

Plaintiff's statement filed.

Now, February 4, 1914, we hereby accept service of the within summons and waive service thereof by the sheriff and also accept service of copy of Plaintiff's statement. Geo. H. Lum. Murray & O'Laughlin, Attys. for W. B. Stephenson.

February 25, 1914.—Affidavit of defense filed.

March 30, 1914.—Prothonotary enters plea of non-assumpsit as per rule of court.

May 4, 1914.—Continued by agreement.

February 2, 1915.—Continued.

May 11, 1915.—On trial list and continued.

Sept. 13, 1915.—By paper filed, judgment is directed to be entered in favor of the Plaintiff and against the Defendants for the sum of Five Thousand Dollars with interest from August 7, 1908. By the Court.

Debt, \$5,000.00.

Interest Aug. 7, 1908.

Filed and entered Sept. 13, 1915.

[fol. 120] Judgment: ———.

Jan. 19, 1920.—By paper filed the above judgment is assigned, transferred and set over to F. E. Cawley, debt, interest and cost, without recourse.

Attest:

Geo. W. Ralston, Prothonotary.

IN COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA.

No. —, May Term, 1914

FRANK STANTON CAWLEY

vs.

GEO. H. LUM and W. B. STEPHENSON

PRÆCIPE FOR SUMMONS

Issue summons in assumpsit, damages not exceeding \$10,000.00.
Returnable first Monday of March next.

Roland Swoope, Attorney for Plaintiff.

To John H. Moore, E-q., Prothonotary.

(Endorsed:) Filed Feb. 4, 1914. John H. Moore, Prothonotary.

[fol. 121]

SUMMONS

CLEARFIELD COUNTY, ss:

The Commonwealth of Pennsylvania to the sheriff of said county,
Greeting:

We command you, that you summon Geo. H. Lum & W. B. Stephenson so that they be and appear before our Court of Common Pleas, to be holden at Clearfield in and for said county, on the First Monday of March next, then to answer Frank Stanton Cawley of a plea in assumpsit, damages not exceeding \$10,000.00, and have you then and there this writ.

Witness the Hon. Singleton Bell, President of our said Court, at Clearfield, Pa., the 4th day of Feb., Anno Domini one thousand nine hundred and 14.

John H. Moore, Prothonotary.

Acceptance of Service

Now, February 4th, 1914, we hereby accept service of the within summons and waive service thereof by the Sheriff and also accept service of copy of Plaintiff's statement.

Geo. H. Lum. Murray O'Laughlin, Attys. for W. B. Stephenson.

[Title omitted]

STATEMENT OF FACTS

The plaintiff, Frank Stanton Cawley, claims of the defendants, Geo. H. Lum and W. B. Stephenson, the sum of five thousand

(\$5,000.00) dollars, with interest thereon from the 7th day of February, 1908, at the rate of six per cent per annum, payable semi-annually, upon the cause of action, whereof the following is a statement.

The defendants, Geo. H. Lum and W. B. Stephenson, on the 7th day of February, 1908, Little Falls, Minn., made their promissory note, whereof the following is a true and correct copy:

[fol. 122] \$5,000.00. Little Falls, Minn., Feb. 7th, 1908.

Four years after date we promise to pay to the order of F. E. Cawley five thousand dollars at Little Falls, Minn., value received, with interest after date at the rate of 6 per cent per annum payable semi-annually.

Geo. H. Lum, W. B. Stephenson.

No. —. Due — —, —.

(Endorsed on back:) Interest hereon paid to Feb. 28, 1908. Interest hereon (\$132.57) paid, being interest to Aug. 7th, 1908. Pay Frank Stanton Cawley or order. F. E. Cawley.

That the said written instrument was a negotiable instrument and was delivered by the Defendant to F. E. Cawley for the purpose of giving effect to the said instrument and was negotiated by said F. E. Cawley by endorsement and delivery by the Plaintiff herein named.

Plaintiff received with said note as collateral security therefore a certificate for fifty shares of the capital stock of the North Western Milling Company of the par value of one hundred (\$100.00) dollars per share. Neither the payee of said note, F. E. Cawley, or the Plaintiff have received anything whatever on account of said collateral and the same is still in possession of the Plaintiff and upon payment of the amount of said note, with interest and costs of this suit, Plaintiff will delivery the said Certificate of Stock to the said Defendants. Defendants upon demand, being made for payment of [fol. 123] the note according to the tenor and effect thereof, have neglected to pay the same or any part thereof, except the interest as credited thereon.

Wherefore, the Plaintiff brings this suit to recover from the Defendants the sum of five thousand (\$5,000.00) dollars, together with interest thereon from August 7th, 1908, at the rate of six per cent per annum, payable semi-annually and costs.

Roland Swoope, Attorney for Plaintiff.

STATE OF MASSACHUSETTS,

County of Middlesex, ss:

Frank Stanton Cawley, the Plaintiff in the foregoing action being duly sworn, according to law, doth depose and say that the facts set forth in the foregoing statement are true and correct.

Frank Stanton Cawley.

Sworn and subscribed before me this 29th day of January
A. D. 1914. George H. Carrick, Notary Public. My
commission expires Dec. 21, 1917.

(Endorsed:) Filed Feb. 4, 1914. John H. Moore, Prothonotary.

[Title omitted]

[fol. 124] AFFIDAVIT OF W. B. STEPHENSON

CLEARFIELD COUNTY, ss:

Personally appeared before me, John H. Moore, Prothonotary, W. B. Stephenson, one of the above named defendants, who being duly sworn according to law, says that he has a full and just defense to the whole of Plaintiff's claim, the nature and character of which is as follows:

First. That plaintiff is not the owner or holder for value or consideration of the note of \$5,000.00 on which this action is brought but is the mere custodian for the purpose of this action.

Second. That there was never an assignment or transfer of said note but a mere delivery without value and that delivery was made long after the maturity of said note and after the note had lost its negotiability.

Third. That F. E. Cawley, the payee, actual holder and owner of said note gave no value or consideration for said note.

Fourth. That at the time this note was given the said F. E. Cawley, held and owned large shares of stock of the Northwestern Milling Company at Little Falls, Minnesota, of which he purported or attempted to assign to said W. B. Stephenson but of which he is still the owner and holder.

Fifth. That at the time this note was given said shares of stock of the Northwestern Milling Company were worthless and of no value and the Northwestern Milling Company was insolvent and within a few months thereafter was adjudged bankrupt.

Sixth. That at the time this note was given the said F. E. Cawley well knew of the worthless value of said stock and of the insolvency of said Northwestern Milling Company.

[fol. 125] Seventh. That at the time this note was given George H. Lum, one of the defendants, was President of the Northwestern Milling Company and had entire control of its management and operation.

Eighth. That at the time this note was given and during most of the period since there has been a close allied business relation between George H. Lum and F. E. Cawley.

Ninth. That at the time this note was given both George H. Lum and F. E. Cawley well knew of the insolvent and bankrupt condition of the Northwestern Milling Company.

Tenth. That W. B. Stephenson never knew of the insolvency of the Northwestern Milling Company until after this note was given and at or about the time the Northwestern Milling Company was adjudged bankrupt.

Eleventh. That F. E. Cawley and George H. Lum together entered into a scheme to cheat and defraud W. B. Stephenson by the method herein set out.

Twelfth. That F. E. Cawley and George H. Lum subsequent to the giving of this note agreed with each other to release and discharge George H. Lum from liability on this note and F. E. Cawley has accepted and received certain property from George H. Lum in consideration thereof.

All of which defendant, W. B. Stephenson, believes and expects to be able to prove on the trial of this case.

W. B. Stephenson.

Sworn and subscribed to this 24 day of February, A. D. 1914.
John H. Moore, Prothonotary.

(Endorsed:) Filed Feb. 25, 1914. John H. Moore, Prothonotary.

[fol. 126]

[Title omitted]

STIPULATION AND ENTRY OF JUDGMENT

We the subscribers hereto, the defendants above named, agree as a settlement of the said case that there be judgment entered against us for the sum of Five Thousand Dollars with interest thereon from August 7th, 1908, and the record costs.

Geo. H. Lum. (Seal.) W. B. Stephenson. (Seal.)

Witness:- Roland Swoope, J. P. O'Laughlin.

Now this 13th day of September A. D. 1915 in accordance with the said direction of the said defendants judgment is hereby entered against the said defendants for the said amount and for the said costs with interest thereon.

By the Court.

Singleton Bell, P. J.

Now this 10th day of May A. D. 1915 we the said plaintiff and the said defendants are agreed that upon the payment by the said defendants, or either of them of the said judgment, debt, interest and costs, the plaintiff shall delivery to the defendant so paying said sum the collateral security which is now held by the plaintiff, to wit:

Fifty shares of the capital stock of the Northwestern Milling Company, a Minnesota corporation.

Roland Swoope, Atty. (Seal.) J. P. O'Laughlin, Atty. for Def. (Seal.)

Witness: ———.

Clearfield, Penna., May 10th, 1915.

[fol. 127] ASSIGNMENT, F. S. CAWLEY TO F. E. CAWLEY

No. 30, May Term, 1914

[Title omitted]

Debt	\$5,000.00
Int. from Aug. 7th, 1908.....
Attorney & Tax.....	5.00
Pro. Moore	15.25

Entered Sept. 13th, 1915.

Now, November 29th, 1919, for value received, I hereby assign and set over to F. E. Cawley the above stated judgment, debt, interest and costs.

Frank Stanton Cawley.

Witness: Lila Lo Casino.

[fol. 128] Index to Assigned to Judgment

Assignee, Cawley, F. E.; assignor, Frank S. Cawley; defendant, Geo. H. Lum; No., term, year, 30, May, 1914; amt., \$5,000.00; date, Jan. 19, 1920.

[fol. 129] COPY OF JUDGMENT DOCKET ENTRY

Defendants	Plaintiffs	Docket	No.	Term	Year	Date of lien
Lum, Geo. H. et al.	Frank S. Cawley. . .	94	30	May	1914	Sept. 13, 1915
Stephenson, W. B. et al.	Frank S. Cawley. . .	94	30	May	1914	Sept. 13, 1915
Defendants	Plaintiffs	Nature of lien		Amount		Commenc't of Int.
Lum, Geo. H. et al.	Frank S. Cawley. . .	Judgment		\$5,000.00		Aug. 7th, 1915
Stephenson, W. B. et al.	Frank S. Cawley. . .	Judgment		\$5,000.00		Aug. 7th, 1915

[fol. 130]

CLERK'S CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA,
County of Clearfield, ss:

I, Geo. W. Ralston, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein Frank Stanton Cawley — plaintiff and George H. Lum and W. B. Stephenson — defendant-, so full and entire as the same remains of record before the said Court, at No. —, May Term, A. D. 1914.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, this 26 day of January, 1920.

Geo. W. Ralston, Prothonotary.

JUDGE'S CERTIFICATE TO CLERK

I, Singleton Bell, President Judge of the Forth-sixth Judicial District, composed of the Courts of Oyer and Terminer, Quarter Sessions and General Jail Delivery, Orphans' Court and Court of Common Pleas, do certify that Geo. W. Ralston, by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary in and for said county of Clearfield the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

Singleton Bell, President Judge.

[fol. 131]

CLERK'S CERTIFICATE TO JUDGE

COMMONWEALTH OF PENNSYLVANIA,
County of Clearfield, ss:

I, Geo. W. Ralston, Prothonotary of the Court of Common Pleas in and for said county, do certify that the Honorable Singleton Bell, by whom the foregoing attestation was made and who has thereunto subscribed his name, was at the time of making thereof and still is President Judge of the Court of Oyer and Terminer, Quarter Sessions and General Jail Delivery, Orphans' Court and Court of Common Pleas, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, this 26 Day of January A. D. 1920.

Geo. W. Ralston, Prothonotary.

(Endorsed:) District Court U. S., So. Dist. W. Va. Filed this 2nd day of July, 1923. Ira H. Mottesheard, Clerk.

[fol. 132] EXHIBIT NO. 10 TO BILL OF COMPLAINT

This deed made this the 18th day of May, 1923, between W. G. Brown, J. M. Wolverton and T. W. Ayres, Special Commissioner, of the first part, and H. L. Kirtley and H. W. Herold, parties of the second part.

Whereas, The Special Commissioners in pursuance of the authority vested in them by a decree of the Circuit Court of the County of Nicholas made on the 25th day of February, 1921, in a suit in chancery therein pending in which F. E. Cawley was plaintiff and W. B. Stephenson, John W. Stephenson, Emma Thomson, Jennie Stephenson and Mary S. Weimer were defendants did sell the real estate hereinafter mentioned and conveyed according to the terms and condition required by said decree, at which said sale the said H. L. Kirtley and H. W. Herold became the purchasers for the sum of Thirty-eight Thousand Seven hundred Dollars (\$38,700.00) and,

Whereas, said court by a subsequent decree made in the case on the 25th day of May, 1921, confirmed the said sale and directed a deed for the said real estate to be made to the said H. L. Kirtley and H. W. Herold by said commissioners.

Now, Therefore, this deed Witnesseth that the said W. G. Brown, J. M. Wolverton and T. W. Ayres, Special Commissioners as aforesaid, do grant unto the said H. L. Kirtley and H. W. Herold a one-fourth interest undivided in the following real estate as hereinafter set out, which real estate is situate in the County of Nicholas, and bounded and described as follows:

The first tract is bounded and described as follows, to-wit: Beginning at two chestnuts on the wagon road leading from Muddlety Creek to Clay Court House on a ridge corner to the 1200 acre tract (No. 2) and to the Ogden and Looney tract and to a tract owned by James Robinson and with the latter S. 14 W. at 18 poles crossing a drain flowing west, 55 poles to a double chestnut and chestnut oak as top of ridge corner to Robinson, thence N. 82 E. crossing point of ridge at 18 poles, 58 poles to a double chestnut on southwest brow [fol. 133] of the mountain corner to Robinson, thence S. 34½ E, at 56 poles crossing a drain flowing southwest, at 90 poles to a path at top of ridge, at 123 poles crossing a drain flowing southwest, at 158 poles crossing top of a flat ridge, in all 225 poles to three white oak stumps true corner to Elijah Bobitt's field at a rock pile and stake, thence S. 83½ W. 34.6 poles to a beech and white oak on a hill side, thence S. 44 degrees and 50 minutes W. 78 poles to a poplar and gum in laurel at the foot of hill crossing the south fork

of Meadow Creek at 35 poles, thence S. 59 E. 58 poles and 8 links to a spruce pine, beech and birch on left bank of left fork of Meadow Creek crossing a branch of Meadow creek flowing north at 7.4 poles, thence N. 47 E. 34.6 poles to a white oak on a hillside crossing said left fork at 3 poles, thence S. 7 E. 62.6 poles to two white oaks near a branch on a west hillside thence S. 66 degrees and 6 minutes W. 62 poles to a gum and hickory near top of ridge at foot of knob crossing a branch of Meadow Creek at 22 poles, thence along the ridge S. 41½ W. 79 poles to a double chestnut on point of a small ridge, thence S. 68 W. 133 poles to a chestnut oak in a low gap in the divide between the waters of Muddlety and Peter's creek at the head of Buck's Garden Creek, thence S. 55 W. 41 poles to two linds (one down) on top of the divide, thence S. 22 degrees and 40 minutes W. 31 poles to a locust at the top of the divide, thence S. 33 W. 96 poles crossing head of hollow to a double chestnut marked as a pointer in a flat at tip of the divide where two chestnut oaks stood, original corner to school land, and with the latter S. 63 degrees and 10 minutes W. 58.4 poles to a sugar original corner on top of a divide between Buck's Garden Creek and Pine run branches of Peters Creek at west end of a gap, thence N. 86 W. 20 poles to two chestnuts marked as pointers on north side of a high knob where a poplar original corner stood (poplar found down), thence S. 79 W. 8 poles and 6 links to a yellow lind original corner, thence S. 40 W. 114 poles to two chestnut oaks on the brow of a high point on said [fol. 134] dividing ridge, thence N. 80 W. 34 poles to a red oak on top of a ridge, thence S. 28 degrees and 10 minutes W. 35 poles to a red oak on *on* left side of top of a flat on said ridge, thence S. 73 W. 104 poles to a chestnut oak at top of ridge at foot of a knob, thence N. 80 W. 32 poles to a red oak and chestnut oak near top of ridge in low gap corner to said school land and a tract of 9.100 acres granted to William Wilson, and with running with the lines of Allen Rader's farm N. 33 degrees and 8 minutes, W. 279 poles to three hickories and a chestnut oak where maple stood on a hillside corner to said Wilson tract, now Allen Rader, crossing the right hand fork of Buck's Garden Creek at 207 poles, thence N. 54 W. 230 poles to a double chestnut oak at top of ridge between Buck's Garden and Twenty Mile Creek at foot of a knob corner to said Wilson grant of 9.100 acres and to the Cameron Brockerhoff lands passing top of ridge at 32 poles, at 50 poles to head of hollow flowing to the right, at 126 poles to top of ridge running southeast and northwest, thence with Brockerhoff N. 40½ E., crossing a branch of Twenty Mile Creek at 170 poles, at 222 poles another branch of said creek, at 364 poles crossing a drain of Twenty Mile Creek, at 488 poles crossing another branch of Twenty-mile, and on 609 poles to three chestnut oaks at top of ridge between Twenty Mile and Buffalo Creek, thence N. 64 W. 40 poles along said ridge to three chestnuts (down), thence S. 83 W. 38 poles to a chestnut oak on top of knob, thence N. 11 E. 48 poles crossing head of Beechy Fork of Buffalo, and on 54 poles to two hickories (one down) on a hillside, thence N. 38 E. 58 poles to a double beech on bank of a branch of Beechy

Fork, thence S. 63 E. 17 poles to two chestnut oaks and a poplar (all down), thence N. 83½ E. at 47 poles crossing Clay County road, at 98 poles crossing a branch of Robinson's fork of Buffalo, in all 127 poles to a gum on a hillside, thence N. 20 E. 41 poles to a chestnut oak on top of mountain in laurel, thence N. 24 W. 31 poles to a small gum and two chestnut oaks (down) thence N. 42 E. 68 poles to a stake with gum pointers, thence S. 23 E. 31 poles to two [fol. 135] chestnut oaks on cliff at brow of mountain, thence S. 39 degrees and 54 minutes E. at 12 poles crossing line of Wilson Survey of 93,000 acres (Cameron-Brockhoff line) corner to Ogden and Looney tract, and with 60 poles crossing hollow draining north east, at 102 poles to a deep hollow and up same in all 224 poles to two chestnut-oaks on the northeast side of road at top of ridge at head of said hollow, thence S. 64 degrees and 24 minutes E. 106 poles crossing road to a chestnut-oak at top of ridge by side of road, and thence S. 53 W. 40 poles to two chestnuts to the beginning, containing exclusive of three reservations 3,096.9 acres. The three reservations embraced within the lines of said tract which are excepted and reserved from the operation of this conveyance are 110.5 acres of Simmett Rader's 171.7 acres for John Rader and 112.1 acres of J. S. Hill.

The Second Tract is bounded and described as follows, to-wit: Beginning at two chestnuts on ridge by the side of the Clay County Road corner to tract No. 1 (3,000 acre grant), to a tract of Ogden and Looney, and to a tract of James Robinson and with the latter N. 73 degrees and 38 minutes E. at 8½ poles crossing Clay County Road, at 40 poles crossing a hollow draining to left, at 78 poles crossing top of narrow ridge, at 88 poles to head of hollow draining to left, at 96 poles to top of ridge running north east and south west, at 140 poles to head of deep hollow draining to left, at 210 poles to top of dividing ridge between waters of Meadow Creek and Buffalo Creek, at 252 poles to head of deep hollow draining east and on 314 poles to a beech where a beech and double maple are called for (maple found down) at top of ridge on the side of a knob corner to C. F. Herold, and running thence with his lines down ridge N. 6 degrees and 35 minutes W. 80 poles to a maple and birch pointers where a poplar and red oak original corner stood, thence N. 56 degrees and 48 minutes E. at 13 poles crossing Broken-bridge Run of Muddlety Creek at 21 poles crossing the road, 28.6 poles to [fol. 136] a white oak and hickory above road on hillside, thence S. 78½ E. 49 poles to end of a point ridge, 67 poles to hollow draining to right, at 140 poles passing a high point, 190 poles to a hollow draining to right, in all 220 poles to a chestnut-oak (down) original corner thence running with lines of Anderson Herold, N. 15½ W. 91 poles to top of ridge, 156 poles to a gum, white oak and two chestnuts, near top of ridge at head of hollow draining west where a gum, maple, and beech are called for (the gum is an original corner), thence N. 32 degrees and 10 minutes east 96 poles to two beech stumps in Anderson Herold's field below point of high knob where original corner two beeches and a maple stood, thence S. 89

W. 54 poles to two sugars on east hillside, thence N. 28 W. 46 poles to end of point ridge, at 179 poles crossing a branch of Enoch Run of Muddlety Creek, 184 poles to a double chestnut and two white oaks and a poplar where a double chestnut and two maples stood (maples down), thence N. 46 E. 60 poles passing point of a ridge, 74 poles to two spruce pines and a maple (maple dead) on right hand fork of Enoch Run corner to Anderson Herold and Remley's 510 acre tract, and with the latter N. 43 W. 132 poles to a point where stake is called for in Lot 1 of Blair Survey to a lind and dogwood corner to Remley and tract No. 3 (500 acre grant), and with the latter and Ogden and Looney S. 28 degrees and 20 minutes W. 773 poles to the beginning, containing 957.2 acres, being the remainder of Lot No. 1 of Blair survey.

The third tract is bounded and described as follows: Beginning at a stake, lind and dogwood, pointers, corner to tract No. 2 (Blair Lot No. 1) and corner to Remley's 510 acre tract, and with the latter N. 19½ E. 23 poles crossing a branch draining south east, 128 poles to head of hollow draining north east, 166 poles to top of ridge, 192 poles to head of Enoch Run, on 216 poles to a bunch of chestnuts corner to Remley and certain school lands, and with the latter N. 66 W. 70 poles to a hickory, gum, chestnut and two dogwoods, at head of Buffalo Creek corner to Cameron and Brockerhoff tract, and with [fol. 137] the latter S. 45½ W. 35 poles to top of ridge running northwest and southeast, 92 poles to a hollow draining northwest, 124 poles to top of a narrow ridge running northwest and southeast, 180 poles crossing a branch of Robinson's Fork of Buffalo Creek, 224 poles to top of a ridge, 258 poles to head of a deep hollow draining northwest, 272 poles to end of a point ridge, and up same same course 327 poles to two chestnuts marked where original corner two poplars stood on west hillside facing branch of Robinson's Fork, thence N. 87¼ W. 82 poles to a gum and two black oaks (latter down) at top of a ridge near a path, thence N. 18 E. 65 poles along top of ridge to two chestnut oaks near a path, thence N. 23 W. 33 poles along top of ridge to a chestnut and chestnut oak, thence S. 67 W. 23½ poles to a gum and chestnut oak on west hillside at head of hollow (latter down), thence N. 78 W. 30 poles to a poplar and two chestnuts on a west hillside by a branch of Buffalo Creek thence S. 42 W. 77 poles crossing several branches flowing north west to a small chestnut oak sapling near top of a ridge where chestnut oak and chestnut original corner stood (both found down), thence S. 1 degree and 40 minutes W. 44.6 poles to a chestnut and two chestnut oaks near top of ridge at the side of a road, thence S. 28 E. 120 poles to two gums and a chestnut at the top of a ridge near the line of the Cameron-Brockerhoff land, thence S. 21 E. 15 poles crossing Cameron et al. line, and running with the Ogden and Looney as claimed by latter 332 poles in all to a stake on line of tract No. 2 and with same N. 28 degrees and 20 minutes E. 480 poles to the beginning, containing 789.97 acres.

The three above described tracts of land lie contiguous in Hamilton, and Summersville Districts in said county of Nicholas and State

of West Virginia, on the headwaters of Buffalo Creek, Twenty Mile Creek, Peters Creek, and some of the west branches of Muddlety Creek, and aggregate 4,844.17 acres, according to a survey made by W. C. Reddy, and being the same three tracts of land a one-fourth interest in which was conveyed to W. B. Stephenson by Mary E. Rhodes of the City of Marietta, by Frank R. Ellis her attorney in [fol. 138] fact by deed dated the 5th day of March, 1902, and of record in the office of the Clerk of the County Court of Nicholas County, West Virginia, in deed book No. 39 at page 192.

The Fourth Tract bounded and described as follows, to-wit: Beginning at a stake at the edge of cleared land and by fence, and about 6 poles from where a poplar corner is called for, the stake in line of Robert G. Carden, then with Carden's line up a ridge N. 69 E. 8 poles to a chestnut on hillside, N. 22 E. 50 poles to a stake and pointers on a ridge where two hickories are called for not found, N. 64 E. 80 poles to a stake by a large rock on hillside near the top where hickory is called for, not found, N. 45 E. 20 poles to Carden's line and Abe Keffer's corner, a stake, leaving Carden's land and with Keffer, same course in all 67 poles to a chestnut oak on a ridge N. 25 degrees 45 minutes E. 41 $\frac{3}{5}$ poles to two chestnut oaks and maple on a ridge, N. 5 degrees and thirty minutes W. 74 poles to a small yellow lynn, on ridge, N. 21 degrees 30 minutes E. 44 poles to a stake and pointers in line of Rhode's tract, now Hegarty and Stephenson, and with same leaving Keffer's N. 31 degrees 45 minutes E. 8 poles to a red oak, down, on the divide between Pine Run and Buck's Garden, and along top of divide S. 79 degrees 30 minutes E. 33 $\frac{7}{10}$ poles to two chestnut oaks on high point, one down, N. 42 degrees and 30 minutes E. 106 $\frac{8}{10}$ poles to a stake where a yellow lynn is called for, not found N. 79 degrees 30 minutes E. 8 poles to a poplar not found, on side of high point, S. 85 degrees 30 minutes E. 20 poles to sugar tree on sharp ridge, N. 64 E. 58 poles to a stake with chestnut pointers, on a high point, corner to the 135 acre tract purchased by Hagerty and Stephenson from J. Haymond Robinson, leaving the Rhodes land and with the 135 acre tract S. 20 E. 32 poles to a chestnut oak, down, on a branch of Pine Run near the head, S. 16 degrees 30 minutes W. 68 poles to a chestnut oak and gum on a point S. 47 E. 19 poles to a gum and two chestnuts by a small drain, S. 20 W. 52 poles to three small [fol. 139] chestnuts on the side of a ridge, near the top, N. 73 degrees 30 minutes E. 63 poles to two chestnut oaks on the steep ground and near the top of the ridge, N. 52 degrees 30 minutes E. 24 poles to a chestnut and chestnut oak, chestnut gone, on side of a ridge near the top and corner to Robinson's 950 acre survey, leaving the 135 acre tract and with the 950 acre tract, N. 73 degrees and 30 minutes E. 144 poles to a double chestnut oak and small chestnut on top of the divide between Pine Run and Muddlety Waters, the chestnut oak is down, leaving the 950 acre tract and with the Herold S. 5 E. 18 poles to a black oak new corner, where a black oak is called for, not found, on steep ground near the top of divide, and with Herold S. 19 $\frac{3}{4}$ W. 46 poles to a black oak and hickory on hillside near low gap between Pine Run and Fockler's Branch S. 22

degrees 45 minutes E. 51 poles to four chestnut saplings on a hillside below and near a rock camp S. 30 W. 29 poles to a locust and chestnut sapling on a ridge, corner to Perkins place, leaving Herold and with Perkins place, now R. M. Bryant, and S. 44 degrees 45 minutes E. 49½ poles to a poplar and chestnut on top of the divide between Pine Run and Peter's Creek, S. 60 W. 58 4/10 poles to four chestnut oaks, on top of the divide S. 61 degrees 45 minutes W. 24 poles to two hickories, and two chestnut oaks leaving the mountain and Bryant and with Horan down the mountain, N. 44 degrees and 30 minutes W. 45 poles to a poplar on flat, new corner, N. 77 degrees 30 minutes E. 25 poles cross a hollow to a small yellow lynn on a steep bank, N. 42 W. 89 8/10 poles to a poplar and beech, beech down, on a hillside, S. 62 W. 29 poles to a stake and pointers at county road, N. 44 degrees 30 minutes W. 34 6/10 poles to two chestnut oaks on a high ridge standing 30 feet apart, S. 45 degrees 15 minutes W. 157 6/10 poles to pointers on a ridge, in B. L. Rader's field and corner to Rader, and with N. 11 W. 161 poles to a birch and pointers on a hillside, old call, beech, birch and maple. S. 63 W. 91 6/10 poles, crossing Pine Run at 13 poles to a white oak and [fol. 140] dogwood in cove, S. 8 W. 153 poles to a chestnut oak. S. 70 W. 210 poles to the beginning, containing three hundred and ninety-eight and one half acres (398½), which said tract of land lies on the waters of Peter's Creek in Summersville District of said Nicholas County, and being the same tract of land a one-fourth interest in which was conveyed to W. B. Stephenson by James S. Craig, Michael C. Duffy, James B. Duffy, Terence J. Duffy, Francis F. Duffy and Owen J. Duffy, by deed dated the 18th day of January, 1906, and now of record in said Clerk's office in Deed Book No. 43, at page 53.

Fifth Tract. Also a one-twenty-fourth (1/24) interest undivided in the following tract or parcel of land which is bounded and described as follows, to-wit: Beginning at a chestnut oak near a low gap at the head of the left hand fork of Buck's Garden Creek corner to a survey of 3,000 acres made for John H. Robinson and with three lines of same S. 51 W. 38 poles to two lynns, S. 28 W. 34 poles to a locust, S. 31 W. 90 poles to two chestnut oaks on a ridge, and leaving S. 32 E. 37 poles to a chestnut oak in a drain of the Pine Run, S. 14 W. 70 poles to two chestnut oaks and a gum on the end of a laurel point facing Pine Run, S. 47 E. 18 poles to two chestnuts and a gum near a drain of same, S. 19 W. 52 poles to two chestnuts on the point of a ridge facing B. L. Rader's, N. 73 E. 64 poles to two chestnut oaks near the top of the main mountain, N. 50 E. 24 poles to a chestnut and chestnut oak, corner to said 950 acres and with four lines of same, N. 47½ E. 60 poles to a gum on a rich hillside, N. 14 W. 80 poles to a white oak on a hillside, crossing Meadow Creek above Upper forks of the left hand fork at 16 and 34 poles, thence N. 11½ E. 12 poles crossing the Spring Branch near its mouth to two beeches on a hillside, N. 62 W. 34 poles to the beginning, containing 135 acres, which said tract of land lies on the head waters of Peters Creek and the head waters of Meadow Creek a tributary of Meadow Creek in Summersville District of said Nicholas County, and being the same tract of land conveyed by J. Haymond

[fol. 141] Robinson and others to A. L. Hagerty by deed dated the 17th day of July, 1903, and of record in the office of the Clerk of the County Court of said Nicholas County, West Virginia, in Deed Book No. 37, at page 524, and the same tract or parcel of land a one-twenty-fourth ($1/24$) interest undivided in which was conveyed to W. B. Stephenson by A. L. Hagerty and wife by deed dated March 16th, 1908 and now of record in said clerk's office in Deed Book No. 49 at page 294.

Sixth Tract. Also a one-fourth ($1/4$) interest undivided in and to the lands inside the Rhodes Survey as run by I. A. Dix, as conveyed to W. B. Stephenson by Abe Keiffer, by deed dated June 15th, 1904, together with the rights as set out in said deed, which said deed is of record in said clerk's office in Deed Book No. 39 at page 200.

Witness the following signatures and seals:

W. G. Brown (Seal), J. M. Wolverton (Seal), T. W. Ayres (Seal), Special Commissioners.

(\$40.00 I. R. Stamps.)

STATE OF WEST VIRGINIA,

County of Nicholas, To wit:

I, H. C. Hill, a Notary Public in and for said county and state, do certify that W. G. Brown, J. M. Wolverton and T. W. Ayres, whose names are signed to the foregoing deed bearing date the 18th day of May, 1923, as Special Commissioners, have this day acknowledged the same before me in my said County.

Given under my hand this the 18th day of May, 1923.

Henry C. Hill, Notary Public. My commission expires June 27th, 1926.

[fols. 142 & 143] STATE OF WEST VIRGINIA,
Nicholas County:

Court Clerk's Office

May 18, 1923.

This deed having \$40.00 I. R. Stamps, duly cancelled, was this day presented in said office, and thereupon, together with the certificate thereto annexed, is admitted to record.

Teste:

C. E. Stephenson, Clerk.

STATE OF WEST VIRGINIA,
Nicholas County:

Court Clerk's Office

June 13, 1923.

I, C. E. Stephenson, Clerk of said Court do hereby certify that the foregoing is a true copy of a deed from W. G. Brown et al., Commissioners, to H. L. Kirtley and H. W. Herold of record in my office, in Deed Book No. 72, page 404.

Given under my hand this the 13th day of June, 1923.

Teste:

C. E. Stephenson, Clerk.

(Endorsed:) District Court U. S., So. Dist. W. Va. Filed this 2nd day of July, 1923. Ira H. Mottesheard, Clerk.

[fol. 144] IN UNITED STATES DISTRICT COURT

SUBPŒNA IN EQUITY—July 2, 1923

UNITED STATES OF AMERICA,
Southern District of West Virginia, ss:

The President of the United States of America to the marshal of the Southern District of West Virginia, Greeting:

You are hereby commanded to summon H. L. Kirtley and H. W. Herold, citizens and residents of the Southern District of West Virginia, and F. E. Cawley, a citizen and resident of the State of Massachusetts, if they be found in your District, to be and appear in the District Court of the United States, for the Southern District of West Virginia, aforesaid, in the Clerk's Office of said Court, at Charleston, on the 21st day of July, 1923, to answer a certain Bill in Equity, filed and exhibited in said Court against them by John W. Stephenson, Emma Thomson, Jennie Stephenson, Mary S. Weimer, and W. B. Stephenson.

Hereof you are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable George W. McClintic, Judge of the District Court of the United States, for the Southern District of West Virginia, this 2nd day of July, 1923, and in the 147th year of the Independence of the United States of America.

Attest:

Ira H. Mottesheard, Clerk D. C. U. S., S. D. W. Va. (Seal.)

Memorandum

The said defendants are required to file an answer or other defense in this suit in the Clerk's Office of said Court, on or before the twenty-[fols. 145 & 146] tieth day after service, excluding the day thereof; otherwise the said bill may be taken pro confesso.

Ira H. Mottesheard, Clerk.

Acceptance of Service

I hereby accept legal service of the within writ this 5th day of July, 1923.

H. L. Kirtley, by Alderson & Breckinridge, Attys.

[File endorsement omitted.]

[fol. 147]

IN UNITED STATES DISTRICT COURT

ALIAS SUBPENA IN EQUITY—Filed September 5, 1923

UNITED STATES OF AMERICA,
Southern District of West Virginia, ss:

The President of the United States of America to the marshal of the
Southern District of West Virginia, Greeting:

You are hereby commanded, as heretofore, to summons H. L. Kirtley, H. W. Herold, and F. E. Cawley, if they be found in your District, to be and appear in the District Court of the United States, for the Southern District of West Virginia, aforesaid, in the Clerk's office of said Court, at Charleston, on the 5th day of September, 1923 to answer a certain Bill in Equity, filed and exhibited in said Court against them by John W. Stephenson, Emma Thomson, Jennie Stephenson, Mary S. Weimer, and W. B. Stephenson.

Hereof you are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable George W. McClintic, Judge of the District Court of the United States, for the Southern District of West Virginia, this 18th day of August, 1923, and in the 148th year of the Independence of the United States of America.

Attest:

Ira H. Mottesheard, Clerk D. G. U. S., S. D. W. Va. (Seal.)

Memorandum

The said defendants are required to file an answer or other defense in this suit in the Clerk's office of said Court, on or before the twentieth day after service, excluding the day thereof; otherwise the said bill may be taken pro confesso.

[fol. 148]

Ira H. Mottesheard, Clerk.

Acceptance of Service

Service of the within summons accepted by me on this the 21st day of August, 1923.

H. W. Herold.

[File endorsement omitted.]

[fol. 149] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF A. J. HORAN—Filed September 5, 1923

STATE OF WEST VIRGINIA,
County of Kanawha, To wit:

In this cause A. J. Horan makes oath in due form of law and states that he is one of the Attorneys for plaintiff in the above styled cause; that F. E. Cawley, one of the defendants to this cause is not an inhabitant of or found within the Southern District of West Virginia; that the said F. E. Cawley has not voluntarily appeared to this action; that the said F. E. Cawley is a citizen, resident and inhabitant of the State of Massachusetts to the best of affiant's knowledge, information and belief.

A. J. Horan, Affiant.

Sworn to and subscribed before me this 5th day of September, 1923. J. W. Riley, Notary Public. My commission expires April 9th, 1931.

[File endorsement omitted.]

[fol. 150] IN UNITED STATES DISTRICT COURT

MOTION FOR ORDER OF PUBLICATION—Filed September 5, 1923

[Title omitted]

Now comes John W. Stephenson, Emma Thomson, Jennie Stephenson, Mary S. Weimer and W. B. Stephenson and moves this honorable court for an order to proceed under Section 57 of the Judicial Code of the United States to obtain service upon F. E. Cawley by publication upon the grounds that personal service upon the said F. E. Cawley is not practicable, he being a resident and inhabitant of the State of Massachusetts.

A. J. Horan, Brown, Jackson & Knight, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 151] IN UNITED STATES DISTRICT COURT

ORDER OF PUBLICATION—September 5, 1923

[Title omitted]

Upon the motion of A. J. Horan and Brown, Jackson & Knight, Counsel for the plaintiffs in the above styled cause, and it appear-

ing to the court that the defendant F. E. Cawley is not an inhabitant of or found within this district, nor voluntarily entered his appearance herein, and that personal service upon the said defendant F. E. Cawley is not practicable, it is hereby ordered that said defendant F. E. Cawley appear, plead, answer or demurrer to the said bill filed by the plaintiffs herein by the 1st day of November, 1923, and in default thereof that the court will proceed to the hearing and adjudication of said suit; and that this order be published in a newspaper of general circulation, to-wit: The Mail once a week for six consecutive weeks.

[fol. 152] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF B. H. ANDERSON—Filed October 13, 1923

STATE OF WEST VIRGINIA,

Kanawha County, To wit:

I, B. H. Anderson Business Mgr. a Daily Republican Newspaper, published in the City of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of J. W. Stephenson et al. Defendants in Chancery #1319 was duly published in said paper once a week for Six successive Weeks commencing with the issue of the 6th day of Sept., 1923, and ending with the issue of the 11th day of Oct., 1923, and was posted at the front door of the Court House of said Kanawha County, West Virginia, on the 6th day of Sept. 1923.

B. H. Anderson, Bus. Mgr.

Subscribed and sworn to before me this 11th day of October, 1923. C. Edwards Anderson, Notary Public of Kanawha County, West Virginia. My commission expires January 7th, 1929. (Notary Seal.)

Printer's Fees, \$19.60.

Annexed Notice

At a District Court of the United States for the Southern District of West Virginia, continued and held at Charleston, in said district, on Wednesday, the 5th day of September, A. D. 1923, the following order was made and entered of record:

[fol. 153] In Chancery. No. 1319

JOHN W. STEPHENSON, EMMA THOMPSON, JENNIE STEPHENSON,
MARY S. WEIMER, and W. B. STEPHENSON, Plaintiffs,

vs.

H. L. KIRTLEY, H. W. HEROLD, and F. E. CAWLEY, Defendants

Upon the motion of A. J. Horan and Brown, Jackson & Knight, counsel for the plaintiffs in the above styled cause, and it appearing

to the court that the defendant, F. E. Cawley, is not an inhabitant of or found within this district, nor voluntarily entered his appearance herein, and that personal service upon the said defendant, F. E. Cawley, is not practicable, it is hereby ordered that said defendant, F. E. Cawley, appear, plead, answer or demur to the said bill filed by the plaintiffs herein by the first day of November, 1923, and in default thereof that the court will proceed to the hearing and adjudication of said suit; and that this order be published in a newspaper of general circulation, to-wit: The Mail, once a week for six consecutive weeks.

A true copy from the record.

Attest:

Ira H. Mottesheard, Clerk.

[File endorsement omitted.]

[fol. 154] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS BILL OF COMPLAINT—Filed October 26, 1923

To the Honorable George W. McClintic, judge of the District Court of the United States for the Southern District of West Virginia:

Said defendants, H. L. Kirtley and H. W. Herold, jointly and severally, move the Court to dismiss plaintiffs' bill upon grounds hereinafter set out in the answer filed herewith and upon grounds to be stated at the bar of this Court upon a hearing of said motion.

[File endorsement omitted.]

[fol. 155] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—March 31, 1924

This cause came on this day to be heard upon process the service of which is duly accepted by the said defendants H. L. Kirtley and H. W. Herold; upon the bill and exhibits regularly filed herein, upon the order of publication duly executed as to the defendant F. E. Cawley a non-resident of the State of West Virginia; upon the motion of said defendants H. L. Kirtley and H. W. Herold to dismiss the bill filed herein, and was argued by counsel.

Upon consideration of all of which the court was of the opinion that the Circuit Court of Nicholas County under the laws of the State of West Virginia had jurisdiction of the suit of F. E. Cawley

against W. B. Stephenson and others, and that the decrees entered amended and supplemental bill, which leave is granted and said amended and supplemental bill accordingly filed. And thereupon the said defendants H. L. Kirtley and H. W. Herold renewed their motion to dismiss the bill and also to dismiss the amended and supplemental bill, upon consideration of which motion the court is of opinion that the said motion is well taken and that the same should be sustained.

It is therefore adjudged, ordered and decreed that said motion be and the same hereby is sustained, and that the plaintiffs' bill and amended and supplemental bill be and the same hereby are dismissed; and it is further ordered that the plaintiffs do pay unto the [fol. 156] defendants H. L. Kirtley and H. W. Herold their costs about their defense in this behalf expended.

[fol. 157] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT—Filed March 31, 1924

To the Honorable George W. McClintic, judge of the District Court of the United States for the Southern District of West Virginia:

therein are not void.

And thereupon the plaintiffs asked leave of the court to file an

The plaintiffs above named file this their Amended and Supplemental Bill of Complaint and say:

First

That they have heretofore filed their original bill herein to which reference is here made and the same asked to be read and treated as a part of this amended and supplemental bill as full and to the same extent as though herein fully and at length incorporated.

Second

That the action of the Circuit Court of Nicholas County, West Virginia, by which the said court decreed and adjudged that the deeds referred to in the original bill from said W. B. Stephenson to his coplaintiffs were fraudulent and void, without hearing any evidence or having any trial upon said question, and without the personal services of process upon any of the defendants in said suit, being the plaintiffs in this suit, and decreeing their lands to sale in satisfaction of the debt therein referred to, was and is a denial of due process of law to the said plaintiffs and was and is in violation of the Fourteenth Amendment to the Constitution of the United

States prohibiting the taking of private property without due process [fol. 158] of law, and that the matters involved in this suit involve the application of said provision of the Constitution of the United States.

Third

Plaintiffs reiterate the prayer of their original bill and pray for all such other, further and general relief as is equitable and just and suited to their case.

John W. Stephenson, Emma Thomson, Jennie Stephenson,
Mary S. Weimer, W. B. Stephenson, by Counsel. A. J.
Horan, Brown, Jackson & Knight, Counsel for Plaintiffs.

[File endorsement omitted.]

[fol. 159] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed March 31, 1924

On this 31st day of March, 1924, came the plaintiffs in the above styled cause and presented to the court their petition praying for an appeal from the decree entered herein dismissing their suit, to the Supreme Court of the United States, and with said petition tender an assignment of errors, which petition and assignment of errors are ordered to be filed.

Upon consideration of said petition and assignment of errors an appeal is allowed as prayed for in said petition, and it is also ordered that the said decree be superseded and upon the appellants' executing a bond in the penalty of \$1,000.00 conditioned as required by law.

[fol. 160] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed March 31, 1924

To the Honorable George W. McClintic, judge of said Court:

Now come John W. Stephenson, Emma Thomson, Jennie Stephenson, Mary S. Weimer and W. B. Stephenson, plaintiffs, by Brown, Jackson & Knight and A. J. Horan, their attorneys, and feeling themselves aggrieved by the final decree of this court entered on the 31st day of March, 1924, hereby pray that an appeal may be allowed to them from said decree to the Supreme Court of the United States, and in connection with this petition petitioners herewith present their assignment of errors.

Petitioners further pray that an order of supersedeas may be entered herein pending the final disposition of such appeal, and that the amount of security may be fixed by the order allowing this appeal.

A. J. Horan, Brown, Jackson & Knight, Counsel for Petitioners.

[File endorsement omitted.]

[fol. 161] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed March 31, 1924

Now come the petitioners John W. Stephenson Emma Thomson, Jennie Stephenson, Mary S. Weimer and W. B. Stephenson, by Brown, Jackson & Knight and A. J. Horan their attorneys, and in connection with their petition for appeal say that in the record of proceedings and in the final decree aforesaid manifest error has intervened to the prejudice of the petitioners, to-wit:

First

The court erred in sustaining the motion of the defendants to dismiss the bill herein.

Second

The court erred in not holding that the action of the Circuit Court of Nicholas County in setting aside the deeds filed as Exhibits No. 7 and No. 8 with the bill as fraudulent and void and decreeing the lands referred to in said bill to sale, without hearing any evidence, was a denial of due process of law to the petitioners in said suit and in violation of the Fourteenth Amendment to the Constitution of the United States.

Third

The court erred in holding that your petitioners were not denied due process of law by the Circuit Court of Nicholas County in entering the decree setting aside the deeds filed with the original bill in this case as Exhibits No. 7 and No. 8 without hearing any evidence upon said question and without any service of process upon your petitioners or either of them.

Wherefore petitioners pray that the decree of the District Court of the United States for the Southern District of West Virginia may be reversed.

A. J. Horan, Brown, Jackson & Knight, Attorneys for Petitioners.

[File endorsement omitted.]

[fol. 163]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRECIPE FOR TRANSCRIPT OF RECORD—Filed March 31, 1924

The Clerk of the District Court of the United States for the Southern District of West Virginia, in making up the transcript of the record in this case for transmission to the Supreme Court of the United States, is requested to include therein the following as constituting such transcript, to-wit:

1. The summons, with the acceptance of service thereof by the defendants Kirtley and Herold.
2. The affidavit of A. J. Horan for substituted service against the defendant F. E. Cawley.
3. The motion for such substituted service.
4. The order granting the motion for substituted service.
5. The order of publication, with the publisher's certificate thereon.
6. The plaintiffs' bill and all of the exhibits therewith filed.
7. The motion to dismiss.
8. The amended and supplemental bill.
9. The order sustaining the motion to dismiss and dismissing the cause.
10. The order granting an appeal to the Supreme Court of the United States.
11. The assignment of errors.
12. Clerk's certificate.

A. J. Horan, Brown, Jackson & Knight, Attorneys for Plaintiffs.

[fol. 164] Service of the above notice is accepted and the papers therein indicated to be included in the transcript are sufficient to presend the questions arising in the case.

A. N. Beckinridge, Mathews, Campbell & McClintic, Attorneys for Defendants H. L. Kirtley and H. W. Herold.

[File endorsement omitted.]

[fols. 165 & 166] BOND ON APPEAL FOR \$1,000—Approved and filed May 2, 1924; omitted in printing

[fol. 167] CITATION—In usual form, showing service on Mathews, Campbell & McClintic; omitted in printing

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[fol. 168] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Southern District of West Virginia, ss:

I, Ira H. Mottesheard, Clerk of the District Court of the United States for the Southern District of West Virginia, do certify that the foregoing is a true and complete transcript of the record in the case of John W. Stephenson, et al., vs. H. L. Kirtley, et al., in accordance with the Præcipe filed in said case, and now of record and on file in my office.

In testimony whereof I hereto set my hand and the seal of said Court, at Charleston, in said District, this 7th day of May, A. D., 1924, and in the 148th year of the Independence of the United States of America.

Ira H. Mottesheard, Clerk D. C. U. S., S. D. W. Va. (Seal
of District Court United States, Southern District of West
Virginia, Charleston, West Va.)

Endorsed on cover: File No. 30,324. S. West Virginia D. C.
U. S. Term No. 381. John W. Stephenson, Emma Thomson, Jen-
nie Stephenson, et al., appellants, vs. H. L. Kirtley, H. W. Herold,
and F. E. Cawley. Filed May 9, 1924. File No. 30,324.